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THOMAS L. SANSONETTI NOMINATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON THE

NOMINATION OF THOMAS L. SANSONETTI TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

APRIL 20, 1990

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THOMAS L. SANSONETTI NOMINATION

FRIDAY, APRIL 20, 1990

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 11:04 a.m. in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The Committee will come to order.

This is a hearing on President Bush's nomination of Thomas Sansonetti to be Solicitor for the Department of the Interior.

Without objection, the written testimony of each witness, the Committee questionnaire and financial disclosure statements will be submitted for the record.

[The prepared statements of Senators Johnston and McClure follow:]

Sen. Johnston

Mr. Sansonetti, I would like to learn your views on the use of legislative history in statutory interpretation.

According to the hornbooks, "It has become the established practice in American legal processes to consider relevant information concerning the historical background of enactment in making decisions about how a statute is to be construed and applied."

However, there is a developing trend in the judiciary to not consult legislative history where the plain meaning of the words of the statute is not clear. This practice is sometimes referred to as the "textualist" approach. One manifestation of this approach is to disregard Congressional committee reports and floor debate as a source of interpretation.

It seems to me that one result of this approach to statutory interpretation is to enhance the authority of the Executive Branch. If the intent of Congress must be

discerned solely from the text without reference to legislative history, there will be fewer cases where judges can confidently determine that intent.

As a result, there will be more cases where the courts will apply the so called "Chevron" principle that an Executive agency's interpretation of a law must be followed where the interpretation does not violate clear Congressional intent and is not unreasonable.

What is your view on the use of legislative history in statutory interpretation by the Executive branch?

Opening Statement of Senator James A. McClure

Hearing to Consider the Nomination of Thomas L. Sansonetti
to be Solicitor for the Department of the Interior

April 20, 1990

Good Morning. I would like to begin by welcoming to the Committee today Mr. Thomas Sansonetti who has been nominated to the position of Solicitor for the Department of the Interior.

Mr. Sansonetti is an extremely well-qualified candidate for this position. He received his B.A. in Foreign Affairs, followed by his M.B.A., from the University of Virginia, and went on to earn his J.D. from Washington and Lee University. He has a broad legal background, having been in private practice in Gillette, Wyoming for seven years, and then serving for two years as the Associate Solicitor for Energy and Resources at the Department. For the past year, he has served as Administrative Assistant to Congressman Craig Thomas and is therefore well aware of the issues currently before the Congress and the Department.

As a Westerner, he has an understanding and appreciation of the problems which face many of the states in which the majority of our public lands are located. His experience in natural resources litigation and his first-hand knowledge of how both the Executive and Legislative branches of government operate will enable him to make a smooth transition to the

position of Solicitor.

I believe Mr. Sansonetti will serve the Department of the Interior very ably, and I strongly support his nomination.

The CHAIRMAN. I see our distinguished colleague at the table, and we would like to begin with Malcolm Wallop, who hails from the great State of Wyoming.

STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator WALLOP. Mr. Chairman, thank you. I might say this is an unusual position for me to be down here. I am usually a little closer to your side.

But I am here because I take great pleasure in joining my two colleagues, Al Simpson and Craig Thomas, in introducing our friend, Tom Sansonetti. I also would like to welcome Tom's wife Kristi, who is behind us, who is taking time off from her law school studies at the University of Virginia to be here today, and his sister, Diane Batty, and her husband, John, who came all the way from Albuquerque to attend this hearing.

So I hope, Mr. Chairman, you can find a way to make it terrifying and startling so that they have something to see in the hearing over their brother and husband.

It is an honor to Wyoming that President Bush tapped Tom for the top legal job at Interior. In doing so, the President could not have picked a more capable or qualified person, in my opinion.

As you well know, Mr. Chairman, the Solicitor's Office is the pivotal link in the ability of the Interior Department to function in a smooth, effective and appropriate manner, and the person who heads that Office has to be someone who understands the varied and often contradictory missions and roles of Interior's nine bureaus. He must grasp the integral relationship between Congress and the Administration. And he must have the commonsense to know how all these multiple activities impact upon the lives of Americans. Finally, he must have unquestionable integrity.

My friend Tom Sansonetti brings all these qualities to the job. He has been a practicing attorney in Gillette, Wyoming, in an area which has been the focal point for some of our Nation's most important debates and legal proceedings on the use of public lands and water. He served as Associate Solicitor for Energy and Resources, where he was in charge of all of Interior's legal matters concerning public lands, water, power, mineral royalties, onshore and offshore oil and gas development.

He has been a top assistant on Capitol Hill, working as our colleague Congressman Craig Thomas's administrative assistant and legislative director.

I could go on, Mr. Chairman, but I will not. I think my 14-year association with Tom and my praise for his character and qualifications for this job could fill longer than any of us would care to hear.

The most persuasive case in the hearing will be made by Tom himself. I know that you and my other colleagues will soon come to understand what a uniquely qualified individual we have before us today, and I think it is fitting that we have somebody going to this position who is not only a friend but someone whose judgment and competence and abilities we can trust.

So I look forward to working with you and the rest of the Committee in a quick confirmation process. That concludes my statement.

The CHAIRMAN. Thank you very much, Senator Wallop. I might say that that is a stronger statement than we usually get around here, which bodes very well for you, Mr. Sansonetti.

Next we are pleased to welcome our colleague, Senator Alan Simpson.

STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM WYOMING

Senator SIMPSON. Mr. Chairman, thank you. It is always a pleasure to come before the Committee, and especially today with my friends Malcolm Wallop and Craig Thomas, and I too greet Kristi Sansonetti.

My remarks are very brief but very sincere. This is a very special man. The best testimonial I can give is that when I was out hunting for county chairmen in Wyoming in 1978 someone said there is a very fine, able, honest, bright lawyer in Gillette. That is the guy you want to get, if you can.

So I went and roosted outside his window like a pathetic divorce client for a while, thinking I could lure him out. Finally he knew what I was up to. But, finally I got in there and I really dropped the whole load on him. He listened and he said, I do not know that I have the time to do that. I said, well, you come as the person in this community, Campbell County, Wyoming, who is a splendid organizer, would be a great chairman and put together a campaign in a tough county, a divergent group of people in that county.

So that is what he finally agreed to do. As you might imagine, he was absolutely superb and did beautifully there because he was totally accessible. He was there. He worked day and night, and how much I appreciated that.

He has a wealth of talent. He has got tremendous experience at every level. He has an infectious enthusiasm which is going to greatly benefit his fellows in his new task. He is just a very thoughtful, sincere and remarkable person.

Malcolm has shared with you some of the details. He has been active in party activities. He brought a lot of fresh spirit to what can be pretty humdrum stuff. You know that record. I will not develop upon it. But I am sure that my friend Craig Thomas is going to miss him. He has been the benefactor of his high performance as administrative assistant, and we in Wyoming are very proud of him and know he will do a tremendous job which will benefit the Interior Department and benefit all of us.

I am very honored and privileged to be here. He is a man of great respect. He is greatly qualified. He is going to serve with real skill and special distinction. He is a very special man and he will do a very special job. He is a serious and sincere and very civil person. I admire him greatly, personally, and have for many years. My wife Ann would share those same feelings about these two lovely people.

Thank you.

The CHAIRMAN. Thank you very much, Senator Simpson.

Next the man for whom Mr. Sansonetti worked, Congressman Craig Thomas.

STATEMENT OF HON. CRAIG THOMAS, U.S. REPRESENTATIVE FROM WYOMING

Mr. THOMAS. Thank you, Mr. Chairman. I appreciate being able to participate in your hearing this morning. Senator McClure, nice to be here.

It is an honor to be here and particularly to speak in behalf of my friend and associate, Tom Sansonetti. By the way, it may be a little unique. The entire Wyoming Delegation is here to speak in his behalf.

Of course Tom and I have worked together for some time in Wyoming, where he was very active in public affairs. The three of us were in the legislature and worked with Tom quite closely as he worked outside of the legislature. He has been very involved in legal work there and knows about water and public lands but also has a feeling for the rest of the country as it pertains to the tasks of the Interior Department.

I serve on the Interior Committee in the House and Tom has had an opportunity to work on a number of those issues. I think particularly important will be, if somewhat brief, an opportunity to work with the Congress and work in the techniques of the Congress, and I think that will be a very important thing.

Certainly my colleagues have expressed our admiration for Tom's ability. I have mixed feelings. I hate to lose Tom from my team, but nevertheless I know the importance of this task. I know the importance of the Interior Department to my State and to this country.

So I certainly do not know how I would speak highly enough in terms of commending Tom to this job, and I know he will do a super job. Thank you so much.

The CHAIRMAN. Thank you very much indeed, Congressman Thomas.

Gentlemen, I know you have appointments, so are glad to have you but I am sure you will have to go.

Senator SIMPSON. Thank you very much. Senator McClure, I did not see you there. It is nice to see you.

The CHAIRMAN. Mr. Sansonetti, the rules of the Committee which apply to all nominees require that they be sworn in connection with their testimony, so please rise and raise your right hand.

[Whereupon, Mr. Sansonetti was duly sworn by the Chairman.]

Please be seated.

Before you begin your statement, I will ask you three questions addressed to each nominee before this Committee.

First, will you be available to appear before this Committee and other Congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. SANSONETTI. I will.

The CHAIRMAN. Are you aware of any personal holdings, investments or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed

and assume the office to which you have been nominated by the President.

Mr. SANSONETTI. I do not.

The CHAIRMAN. Are you involved or do you have any assets held in blind trust?

Mr. SANSONETTI. I do not.

The CHAIRMAN. All right. Please proceed.

STATEMENT OF THOMAS L. SANSONETTI, NOMINEE TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

Mr. SANSONETTI. Thank you.

Mr. Chairman and members of this Committee, I think first of all I would like to thank the members of the Wyoming delegation. I appreciate very much their kind words this morning. I have had the opportunity to both know and work for and with those individuals for some 14 years with Senator Wallop and 12 years with Senator Simpson, and over a decade now with Craig Thomas. I appreciate very much their appearing here today and am honored by the fact that they appeared on my behalf.

I, too, would personally like to introduce those three family members that have come today. First I think again my wife, Kristi, who is immediately behind me here, who will hopefully be graduating from law school herself at the University of Richmond here in two weeks, with any luck.

And secondly my sister, Diane Batty, who is from Albuquerque, New Mexico, along with her husband, John Batty. Both are constituents of two of the Senators who serve on this Committee. Diane is a heart surgeon and John is a cardiologist in Albuquerque.

It is an honor to appear before you today. I am privileged to be President Bush's nominee for the position of Solicitor at the Department of the Interior. I am excited about the prospect of serving in this Administration and working with Secretary Manuel Lujan on the many natural resource and environmental challenges facing our Nation.

If recommended by this Committee and confirmed by the Senate, I will have the opportunity to serve in what I believe to be one of the premier legal posts in the Federal Government. It will be my duty to join those responsible for the stewardship of our country's public lands, parks, water projects, wildlife, Indian tribes and insular areas in protecting and managing those resources in a balanced manner.

President Bush's 1990 agenda includes formulating a national energy strategy, improving the lives of Native American people, and working with the rest of the hemisphere on safeguarding the inter-American environment. I am committed to working for the furtherance of all of these goals.

The Department's management of this Nation's land, mineral, wildlife, and water resources directly affects the daily lives of millions of Americans, particularly in my home region—the west. The often complex and difficult legal issues that would face me as Solicitor evolve from the constant public debate over both proposed and implemented Departmental policies.

My personal observations of Interior's impact are based on my firsthand experience as a citizen of Gillette, Wyoming, where I set up a law practice after earning a B.A. and a M.B.A. degree from the University of Virginia and a law degree from Washington & Lee University.

I have visited Yellowstone National Park and Devil's Tower, the country's first national monument, many times. I have cross-country skied in Wyoming's Big Horn mountains and in the Sunlight Basin in the northwestern part of the State. I have hunted wild turkey in the Black Hills, antelope in my home county of Campbell, and elk in the splendid Wind River Range of west central Wyoming. I have docked sheep and dehorned cattle that graze on public lands.

I have also experienced the benefits and impacts of an oil, gas and coal boom on the citizenry of the Nation's smallest populace. And I have also seen the devastating economic effects of the inevitable bust that followed.

I appreciate the arid west's thirst for scarce water resources that pits the Federal Government, individual States, and sometimes Indian tribes against one another. I have visited reservations in Montana and Wyoming and know of the poverty and unemployment that exist there. I believe these educational experiences will hold me in good stead as I render legal advice and help shape policy direction at the Department.

One of the assets I believe I would bring to the job of Solicitor is my previous 22-month government experience at the close of the Reagan Administration. As the Associate Solicitor for Energy and Resources, I had the opportunity to learn the building while serving as the principal attorney for the Bureau of Land Management, the Minerals Management Service, and the Bureau of Reclamation.

While there, I worked on royalty, grazing fee, leasing reform, and water dispute issues. I developed an appreciation for the many sides to natural resources litigation and obtained a good deal of exposure to the workings of the Department of Justice, the Office of Management and Budget, and the Department of Energy.

Another asset I could bring to the job would be my understanding of the legislative process from the vantage point of having worked in a Congressional office. As the administrative assistant to Congressman Craig Thomas, I have been fortunate to be able to follow all of the 101st Congress' proposed legislation within the House Interior and Insular Affairs Committee, on which he serves, plus monitor the action of his two subcommittees on national parks and public lands and water.

Thus, I understand the interrelationship between the Executive, Legislative and Judicial branches of our government—having worked within the two of them since 1987 and having practiced before the other for 11 years, with over 500 court appearances to my credit.

In the past few weeks, I have met with many of the members of this Committee. I have come to know your present concerns about the Department and the environmental and natural resource issues of the day. I have come to understand your concern over the need to maintain strong regional and field solicitor offices outside of

Washington while coordinating their activities with the policies established inside the Department.

Accordingly, if confirmed, I would plan to travel to these offices, which handle so many of the day-to-day concerns of your constituents, with some regularity to ensure the best services possible. In addition, I will move promptly to fill all outstanding regional solicitor vacancies.

I am committed to administering the field and regional offices' operations more effectively while apprising myself of the positions of all current or potential litigants. I like to think of myself as a problem solver and a mediator. My 11 years in private practice as a trial lawyer have convinced me that clients are best served by vigorous attempts to resolve disputes short of litigation.

To that end, my door will always be open to both the business and environmental communities. And to narrow the legal issues involved, I will need to hear their legal arguments and they will also need to hear mine. I also understand the need to develop strong working relationships with the other legal decisionmakers at the White House, the Environmental Protection Agency, the Department of Energy, and the Department of Justice.

In closing, let me say that I have a strong belief that we must conserve for future generations the opportunity for experiencing a cleaner, greener United States than we have now. At the same time, we must provide future generations with the same kind of opportunity for the quality of life that we enjoy today and for the economic achievement that has characterized the history of this Nation.

The 21st century will be a better place for us all to live if wise decisions are made during this and the next few years concerning clean air, clean water, and the multiple use of our public lands. I am excited at the prospect of playing a role in that decisionmaking process. In carrying out the duties of Solicitor, if confirmed, I look forward to working closely with the members of this Committee and other Members of Congress to deal successfully with the issues involving America's natural resources.

I will be happy to answer any questions you may have today. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sansonetti, looking over your statement for completion by Presidential nominees here I notice two things that sort of jump off the page. One is that you graduated from Washington & Lee University, which happens to be my school.

The other is that you were a teaching pro of tennis.

[Laughter.]

Mr. SANSONETTI. Once upon a time.

The CHAIRMAN. Do you promise to instruct the Chairman? [Laughter.]

The CHAIRMAN. That stands you in very good stead, with the Chairman at least.

Mr. Sansonetti, there is a new legal doctrine that seems to be out gaining popularity today, and that is to disregard the historical background, the intent of Congress as set forth in committee reports and legislative history. Some members of the Supreme Court have said you need to look at only the text of a statute and disre-

gard the committee reports and other evidence of Congressional history and intent.

We, of course, are very strong on this Committee on adhering to the Congressional intent, where it can be fairly discerned. Sometimes, of course, it is contradictory and unclear, but more frequently it is clearly set forth in our Committee reports. We do take our Committee reports quite seriously.

If confirmed, which view will you take? Will you try to follow the Congressional intent?

Mr. SANSONETTI. I would, Senator. I have had the opportunity to work on just some of those types of legal problems as Associate Solicitor, and I know that if you cannot find the answer on the face of the statute that I think it is certainly desirable for the attorneys who will be working under me to dig into the legislative history and find that legislative intent.

If the Congressional intent is not clear, then I think that's time for individuals in the Department of the Interior to come back to you, the Members of the Committee, and seek that help or ask for further guidance from Congress on that particular issue.

The CHAIRMAN. Thank you very much. Senator McClure?

Senator MCCLURE. Mr. Chairman, I have no questions. I just want to make sure that my opening statement appeared at the appropriate place at the beginning.

The CHAIRMAN. Yes, it has been put in the record.

Senator MCCLURE. Because I will not take time to repeat that other than to summarize by saying I am strongly in support of this nominee. I am proud of the fact that the President made the nomination and look forward to working with the Solicitor in what is one of the key positions in the formulation and execution of national policy.

I welcome you before the Committee and I wish you very good luck.

Mr. SANSONETTI. Thank you, Senator.

The CHAIRMAN. Senator Wallop.

Senator WALLOP. Mr. Chairman, I am disappointed that there have not been more sparks and other things to entertain Tom's family. They have traveled a long way just to see us fall off the edge here. But, on the other hand, I know that it is a reflection of the way in which he has done his homework with the members of the Committee, which tells me something about the way he is likely to fulfill the requirements of his job.

Tom, I have only one question. You mentioned a little bit that you liked to view yourself as a problem solver and facilitator. I think the one thing that drives Americans absolutely nuts in all their dealings with the government, to say nothing of the dealings with the Department of the Interior, is the flashing yellow light.

I think almost anybody can accept a no, and would appreciate a yes, if that is what they were seeking. But the lack of decision is the thing that drives people really nuts. Of course, going through the court system is one of the ways to prolong the decisionmaking process.

So just from your experience as a trial lawyer, what chances do you see that you have within the Department to get to decisions

through the process of mediation and resolution rather than going through the system of the courts?

Mr. SANSONETTI. I would agree with your assessment, as I stated in my opening remarks, that it's better to reach for resolution of some of the items and concerns of the day through negotiation rather than waiting for the court system to take its effect.

Within the Department itself, of course, there are always competing interests, and sometimes that flashing yellow light you refer to comes about because the Secretary is in the position of having to juggle these competing interests between the Bureau heads and the constituencies that flow up to the individual assistant secretaries.

Hopefully, as the counsellor and lawyer to the Secretary I will be able to help him bring those individuals together on the key questions of the day and try and reach a resolution. Inevitably for those resolutions, as you put it, some are happy outside of government to view those and some are not. And so the lawsuit may follow that decision, regardless. And in that case obviously I'm going to have to work with the Department of Justice in perhaps trying to resolve the matter once it enters litigation.

But I think it's a two-step process, working within the building to get the decision made, because they are going to have to be made eventually and they are going to make some people unhappy inevitably. And if that lawsuit follows, then that's when the Solicitor's job reaches outside the building to work with the Department of Justice.

Senator WALLOP. I would not pretend to try to hold you accountable for the decisions and behavior of others. But if in the first instance you can get to the yes or the no I think the nation does not have enough resources to wait until somebody has a no. Then they can go on and put their energies and resources and time into doing something else in life. If they have a yes, they can go on and help develop whatever it is the nation and that individual may need.

I really wish you well in that, and I am hoping that that process does speed up the whole procedure of rules, regulations and laws that govern the Department of the Interior. I think all of us on the Committee know how much in conflict some of those are with each other. I do not know how you solve that, but I wish you well in trying.

Mr. SANSONETTI. Thank you, Senator.

The CHAIRMAN. Well, thank you very much, Mr. Sansonetti. We will have some questions in writing and, for the members of the Committee, we will hold the record open until 4:00 p.m. today for those questions.

In the meantime, we will try to speed this nomination through quickly so that you will be confirmed. I am certain you will be because you are very well qualified. Thank you very much, Mr. Sansonetti.

Mr. SANSONETTI. Thank you, Senator.

[Whereupon, at 11:28 a.m., the hearing adjourned.]

APPENDIXES

APPENDIX I

Informational Statement of Thomas L. Sansonetti

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Sansonetti (LAST) Thomas (FIRST) Lawrence (OTHER)

Position to which nominated: Solicitor, US Dept. of the Interior Date of nomination: 3/20/90

Date of birth: 18 / 05 / 49 (DAY) (MONTH) (YEAR) Place of birth: Hinsdale, Illinois

Marital status: Married Full name of spouse: Kristi Ann Todd Sansonetti

Name and ages of children None.

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Virginia	1967-1971	B.A. Foreign Affairs	June 1971
University of Virginia	1971-1973	M.B.A.	June 1973
Washington & Lee Univ.	1973-1976	Juris Doctor	June 1974

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

Administrative Assistant, Cg. Craig Thomas (R-WY) Wash.,DC 4/89-Present

Campaign Manager, The Craig Thomas for Congress Campaign, Casper,WY 3/89-4/89

Assoc. Solicitor--Energy & Resources, US Dept. of Interior, Washington, DC May 1987 - March 1989

Partner, Sheehan, Stevens & Sansonetti, Attorneys at Law Gillette, Wyoming 1978 - 1987

Sole Practitioner, Thomas L. Sansonetti, Attorney at Law Gillette, Wyoming 1976 - 1978

Summer Legal Intern, Ashland Oil Co., Washington, DC June - August 1975

Summer Finance Intern, Sea Pines Plantation Co., Hilton Head Island, SC June - August 1974

Tennis Pro, Brian Wood Swim & Racquet Club, Midlothian, VA June through August 1971 - 1973

Employment record—Continued

Military service: Describe any military service not listed above, including dates, rank, and type of discharge.

I have not served in the military.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

The White House Fellowship Competition Finalist 1982 - 1983

Outstanding Young Men of America - 1979

Distinguished Service Award, Gillette Jaycees - 1981

Omicron Delta Kappa, National Honorary - 1973

The Raven Society, University Honorary - 1971

Student Body President, Washington & Lee Law School - 1976

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Dates	Office held (if any)
American Bar Association	1977 - Present	
Wyoming Bar Association	1977 - Present	
District of Columbia Bar Assoc.	1977 - Present	
Campbell Co., WY Bar Assoc.	1977 - 1987	President - 1987
Campbell Co. Chamber of Commerce	1977 - 1987	Vice President - 1981
Campbell Co. Parks and Recreation	1977 - 1981	Vice Chmn. 1980-1981
Campbell Co. United Way	1978 - 1981	President - 1979-1980
St. John's Episcopal Church Washington, DC	1988 - Present	

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written.

None.

Future employment relationships:

1. Will you sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate?

Yes.

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization?

No.

3. Has a commitment for employment after you leave government been made to you by anyone? Have you made any such commitment?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not applicable.

Future employment relationships—Continued

(b) If you have been appointed for an indefinite term, are there any known limitations on your willingness or ability to serve for the foreseeable future?

No.

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

I anticipate no receipts from previous business relationships as my law partnership was dissolved in 1987, and thus, my categories established for reporting income on Form SF 278, Schedule A show no deferred income arrangements.

3. Are you currently a party to any legal action? If so, describe its nature and status.

No.

4. Have you ever declared bankruptcy? If so, describe the circumstances.

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No.

Potential conflicts of interest:

1. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

To my best recollection, I have none.

2. Describe any business relationship, dealing or financial transaction (other than taxpaying) that you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, which might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

To my best recollection, I have none.

3. Describe any lobbying activity which you have performed during the past 10 years with respect to legislative or administrative actions at the Federal, State or local level.

I have performed no lobbying activities.

4. Have you been informed of the conflict of interest laws and regulations applicable to the position to which you have been nominated?

Yes.

Potential conflicts of interest—Continued

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to this form and the attachments thereto. Attach a statement of the appropriate agency ethics official explaining the applicable laws or regulations, any potential conflicts, and the action required to resolve such conflicts.

I will consult with the Departmental Ethics Officer to discuss any potential conflict of interest that may arise.

6. Explain how you will resolve any potential conflicts of interest that may arise in the future if you are confirmed for the position for which you have been nominated.

I will seek advice from the Department of the Interior Ethics Officer and, if necessary, from the Office of the Counsel to the President and take action accordingly.

Public disclosure: Do you have any objections to this form and the attachments thereto being made public?

No.

AFFIDAVIT

I, Thomas L. Sansonetti) ss being duly sworn, hereby state that I have read the foregoing Statement for Completion by Presidential Nominees, including all attachments thereto, and that the information provided therein is, to the best of my knowledge and belief, current, accurate, and complete.

Thomas L. Sansonetti
(Signature of Nominee)

Subscribed and sworn to before me this 21st day of March, 1990

Elizabeth J. Sherwood
Notary Public

My Commission Expires March 31, 1991

Form approved by the Committee February 5, 1985.

U.S. GOVERNMENT PRINTING OFFICE: 1987—67-074

SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0001

Reporting Status (Check Appropriate Box)			OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate	☐ Termination Filer	3/20/90		

	Last Name	First Name and Middle Initial
Reporting Individual's Name	SANSONETTI	THOMAS L.
Position for Which Filing	Title of Position: SOLICITOR	Department or Agency (If Applicable): U.S. Dept. of the Interior
Location of Present Office	Address (Number, Street, City, State and ZIP Code): 1721 Longworth House Office Building Washington, D.C. 20515	Telephone No. (Include Area Code): (202) 225-2311
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Associate Solicitor, Energy & Resources, Dept. of the Interior May 26, 1987 through March 12, 1989	

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	SENATE ENERGY & NATURAL RESOURCES COMMITTEE	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Thomas L. Sansonetti	1.2.90
Other Review (If desired by agency)	Signature of Other Reviewer: Mason Tai	Date (Month, Day, Year): 3/21/90
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Charles J. Kiy	3/21/90
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

NSN 7540-01-030-8444

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A (except for BLOCK D), C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

SF 278 (Rev. 1/87)
FPM Chapter 735
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0007

Reporting Individual's Name	Assets and Income	Page Number		Schedule A
Thomas L. Sansonetti			2	

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

S or DC	Examples	BLOCK A Assets & Income Sources (Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐)	BLOCK B Valuation of Assets — Category of Value (X): None (or less than $1001)	$1,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000	BLOCK C Income — Type of Income (X): Dividends	Rent	Interest	Capital Gains	Exempted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $101)	$101 $1,000	$1,001 $2,500	$2,501 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $1,000,000	Over $1,000,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	BLOCK D Transactions Test: If yes, complete Schd. B Part I for these assets including those sold for a loss — YES	NO
		X Y Z Common			X				X									X									
		Doe Jones & Smith, Hometown, USA		X											ptnrship income									$50,000			
1		U.S. Government Dept. of the Interior													Salary									$17,958			
2		National Republican Congressional Cmte													Fee									$ 8,000			
3		U.S. Government House of Representatives													Salary									$50,200			
4		1106 Terrace Circle Gillette, WY			X					X									X								
5		Sheehan, Stevens & Sansonetti Building						X								X											
6		Partnership, Gillette, WY																									
7		Parvin, Wilson & Hopper law firm, Richmond, VA													Spouse Salary												
8		Crestar Bank Accounts Washington, D.C.			X						X							X									
9																											
10																											

SF 278 (Rev. 1/87)
Final Caution 72d
U.S. Office of Personal Management

Form Approved
OMB No. 3209-0007

Reporting Individual's Name

Thomas L. Sansonetti

Page Number	3	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S or DC	Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
		Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
Example	X Y Z Common	X			2/1/83		X			
1	NOMINEE - NOT APPLICABLE									
2										
3										
4										
5										
6										

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude gifts** from relatives and **exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.**

NONE ☐

S	Source (Name and Address)	Brief Description	Value
Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
Example	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1	NOMINEE - NOT APPLICABLE		
2			
3			
4			
5			
6			

278 (88)

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SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name	Page Number	Schedule
Thomas L. Sansonetti	4	C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Example	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1		City of Gillette, Wyoming	Municipal Bonds on office building.	1983	10%	15yrs.					X
2		First National Bank of Gillette, Wyoming *	Promissory Note backed by mtge. on vacant lot.	1989	11%	1 yr.			X		
3		First National Bank of Gillette, Wyoming	Mortgage on personal residence rented out in Gillette, Wyoming	1980	9½%	30yrs.		X			
4											
5											
6											

* Liability of the Sheehan, Stevens & Sansonetti Building Partnership.

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/76 pinership agmnt

SF 278 (Rev. 1/87)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0040

Reporting Individual's Name
Thomas L. Sansonetti

Page Number	5	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/76	11/83
	Sheehan, Stevens & Sansonetti Building	Investment Partership	General Partner	1982	present

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 17, 1990

The Honorable J. Bennett Johnston
Chairman, Committee on Energy and Natural Resources
United States Senate
Washington D.C. 20510

Dear Mr. Chairman:

Pursuant to Section 201(b) of the Ethics in Government Act of 1978, as amended, I hereby certify that the information below will update my Financial Disclosure Report (SF-278) dated January 2, 1990 with respect to outside earned income and honoraria.

Please be advised that since my January 2, 1990 Financial Disclosure Report, I have received $22,137 from the U.S. House of Representatives as salary for the period from January 2, 1990 through April 17, 1990. I have received no honoraria during this period of time.

I further certify that I have transmitted copies of this report to the Designated Agency Ethics Official of the Department of the Interior and to the U.S. Office of Government Ethics.

Thomas L. Sansonetti
Thomas L. Sansonetti

Washington)
District of Columbia)ss
)

Subscribed and sworn before me on this 17th day of April, 1990.

Kathleen O. St. Pierre
Notary Public

My commission expires: April 14, 1994

cc: Honorable James A. McClure

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 17, 1990

Donald E. Campbell
Acting Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W.
Suite 500
Washington D.C. 20005-3919

Dear Mr. Campbell:

As required by 5 CFR 734.604(d), I hereby submit a true copy of my amendment and certification to the Senate Committee on Energy and Natural Resources. The amendment makes current, as of this date, the information contained in my Financial Disclosure Report (SF-278) dated January 2, 1990 with respect to outside earned income and honoraria as required by Section 202(a)(1)(A) of the Ethics in Government Act of 1978, as amended.

Sincerely,

Tom Sansonetti

Thomas L. Sansonetti

Enclosure

APPENDIX II

Responses to Additional Questions

Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

APR 23 1990

Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find my answers to the questions for the record following my confirmation hearing before the Senate Energy Committee on April 20.

Please let me know if you need any additional information. I look forward to working with your Committee in the future.

Sincerely,

Tom Sansonetti

Thomas Sansonetti
Solicitor-Designate

Enclosures

cc: Honorable James A. McClure, Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

1. Question: Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, Please explain.

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

2. Question: Have you ever been convicted (including a plea of guilty or nolo contendre) of any criminal violation other than a minor traffic offense?

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

3. **Question:** Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

4. Question: Have you or your spouse ever represented in any capacity (e.g., employee, attorney, business, or political adviser or consultant), with or without compensation, a foreign government or an entity controlled by a foreign government? If so, please fully describe such relationship.

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

5. Question: If you or your spouse has ever been formally associated with a law, accounting, public relations firm or other service organization, have any of your or your spouse's associates represented, in any capacity, with or without compensation, a foreign government or an entity controlled by a foreign government? If so, please fully describe such relationship.

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

6. Question: During the past ten years have you or your spouse received any compensation from, or been involved in any financial or business transactions with, a foreign government or an entity controlled by a foreign government? If so, please furnish details.

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

7. Question: Have you or your spouse ever registered under the Foreign Agents Registration Act? If so, please furnish details.

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

8. Question: Were all your taxes (Federal, State, and local) current (filed and paid) as of the date of your nomination hearing? If not, please explain.

Answer: Yes.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

9. Question: Have all your Federal, State, and local taxes always been paid on time? If not, please explain.

Answer: Yes.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

10. Question: If confirmed, are there any known limitations on your willingness or ability to serve for your full term or until the next Presidential election, whichever is applicable?

Answer: No.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

11. Question: Please advise the Committee of any additional information, favorable or unfavorable, which you think the Committee would want to be aware of in considering your nomination.

Answer: None.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

12. Question: The United States District Court for the District of Columbia recently ruled in National Wildlife Federation v. Luian, Civ. Action No. 87-1021 et al. (D.D.C., Feb. 12, 1990) that the Surface Mining Control and Reclamation Act (SMCRA) requires miners to restore damage to surface structures from underground mining, otherwise known as subsidence. It is my belief that this is an accurate interpretation of the law. I understand that the Department of the Interior has recommended to the Department of Justice that the federal government not appeal this decision.

- o Are you aware that this is the case?

- o Do you agree with this decision?

Answer: I am aware that the Interior Department did recommend to the Department of Justice that the Federal government not appeal the portion of the district court decision in NWF v. Luian, C.A. No. 87-1021 et al. (D.D.C. February 12, 1990) requiring coal operators to repair or correct material damage to structures resulting from subsidence from underground mining.

I agree with the decision of the Interior Department recommending that the district court decision not be appealed.

Thomas L. Sansonetti
Solicitor-Designate

Senator Johnston

13. Question: Mr. Sansonetti, I would like to learn your views on the use of legislative history in statutory interpretation.

According to the hornbooks, "It has become the established practice in American legal processes to consider relevant information concerning the historical background of enactment in making decisions about how a statute is to be construed and applied."

However, there is a developing trend in the judiciary to not consult legislative history where the plain meaning of the words of the statute is not clear. This practice is sometimes referred to as the "textualist" approach. One manifestation of this approach is to disregard Congressional committee reports and floor debate as a source of interpretation.

It seems to me that one result of this approach to statutory interpretation is to enhance the authority of the Executive Branch. If the intent of Congress must be discerned solely from the text without reference to legislative history, there will be fewer cases where judges can confidently determine that intent.

As a result, there will be more cases where the courts will apply the so called "Chevron" principle that an Executive agency's interpretation of a law must be followed where the interpretation does not violate clear Congressional intent and is not unreasonable.

What is your view on the use of legislative history in statutory interpretation by the Executive branch?

Answer: To summarize what I said at the hearing, when the language of the statute is clear, that is ordinarily as far as we need to look to discover Congress' intent. Even then it is appropriate to review the legislative history to assure that the Executive Branch's notion of what is "clear" is the same as the Legislative Branch's notion.

When the statutory language is unclear, it is appropriate to consider not only the text of the statute as a whole, but also the legislative history of the relevant provision.

Thomas L. Sansonetti
Solicitor-Designate

Senator Heflin

1. Question: Some issues in the endangered species area involve species that inhabit not only U.S. territory but also the territory of our neighbors to the north and south. Should these non-U.S. species populations be considered in determining the status of a species under the Endangered Species Act? Does the Endangered Species Act require that these populations be considered in the listing process?

Answer: Under the Endangered Species Act, a species for purposes of listing as endangered or threatened may be defined as narrowly as a subspecies or a "distinct population." The Secretary can look at non-U.S. populations of species in considering listing decisions, but retains the discretion to list only the domestic population if a species-wide listing is not justified.

Thomas L. Sansonetti
Solicitor-Designate

Senator Heflin

2. Question: Executive Order 12630 and the Attorney General's Guidelines implementing the E.O., require that federal agencies undertake a "takings implication assessment" prior to promulgating final rules that might result in a taking under the 5th Amendment. Is the Department of Interior bound by the E.O.? Is the U.S. Fish and Wildlife Service? Are rules promulgated in the absence of such an analysis void? Will you enforce the E.O. within the Department?

Answer: In my opinion, the Executive Order is intended to ensure that the entire Executive Branch fully evaluates the effects of administrative, regulatory and legislative actions on constitutionally protected property rights. While the Executive Order does not create any third party rights or benefits against the United States, the Department of the Interior, and all its bureaus, including the Fish and Wildlife Service, should fulfill its terms as an ongoing management directive of the Administration. Prior to the publication of any rule, a determination is made on whether or not property interests are affected. If so, a Takings Analysis would be prepared prior to publication of a rule. The Solicitor has been designated as the Takings Officer for the Department to assure compliance with the Executive Order. If confirmed, it is my intention to assure continued compliance with the Order at Interior.

Thomas L. Sansonetti
Solicitor-Designate

Senator Helfin

3. Question: When the Endangered Species Act was reauthorized in 1988, the 1983 change-in-the-law was kept intact: The economic impact of a listing is not considered in the process. Do you believe it should be considered in the speed with which the U.S. Fish and Wildlife Service issues Section 7 and Section 10 permits under the Act?

Answer: As you correctly indicate, the economic impact of listing a species as threatened or endangered is not considered in the listing process. The listing process is distinct from the Section 7 consultation process and the Section 10 permit process. Section 7 consultations and Section 10 permits under the Endangered Species Act follow strict statutory and regulatory criteria. The focus of both procedures is an analysis of potential impacts to an endangered or threatened species, taking into account "the best available scientific and commercial information." The product of section 7 consultation is a biological opinion by the U.S. Fish and Wildlife Service. The opinion will conclude that the federal action will result in "likely jeopardy" or "no likely jeopardy" of an endangered species. The biological opinion must be based on scientific information and analysis. However, if the Fish and Wildlife Service does conclude that a proposed federal action leads to jeopardy, it is my understanding that any alternatives to the proposed federal action must be analyzed under a "reasonable and prudent" standard. The determination of whether alternatives are "reasonable and prudent" can be based on economic factors.

On the other hand, Section 10 permits for taking or importing an endangered species may only be done for the purposes of scientific research, the enhancement of propagation or the survival of an endangered species. The strict criteria for this type of permit appears to foreclose economic considerations.

With respect to the issue of the length of time for Section 7 consultation, I would note that a biological opinion under Section 7 must be completed in ninety days.

Thomas L. Sansonetti
Solicitor-Designate

Senator Heflin

4. Question: Will you pledge that your office will review every proposed species listing to ensure procedural and substantive compliance with the law?

Answer: If confirmed, yes. The Office of the Solicitor reviews each proposed and final listing package for legal sufficiency prior to publication.

Thomas L. Sansonetti
Solicitor-Designate

Senator Heflin

5. Question: Regulations implementing the Endangered Species Act provide five rationales for declaring a species endangered. One of these is "the present or threatened destruction, modification or curtailment of (the species') habitat or range." The U.S. Fish and Wildlife Service has interpreted this rationale to include decline in the "historical range" of the species. Thus, if a species' habitat declined in the ninety years since 1900, the Service could be justified in declaring a species endangered in 1991, even if there was no proof that additional decline in the habitat was in the offing. Is this a correct regulatory standard?

Answer: As you correctly indicate, the regulatory standard does not expressly address the issue of historic range. The Endangered Species Act requires listing determinations to be based on the "best scientific and commercial data available," as applied to the 5 criteria established by the Act. A species that has been seriously depleted in numbers and habitat quality often is susceptible to substantial heightened threats. Even though further habitat loss may not be anticipated, prior evidence of severe habitat declines may be shown to have placed the species in danger of extinction and to have increased threats to justify a listing under the criteria in Section 4(a)(1) of the Act.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

1. Question: You served as Associate Solicitor for Energy and Resources between May 1987 and March 1989. Ralph Tarr served as Solicitor during much or all of that time.

Do you know Mr. Tarr?
Do you have any observations on Solicitor Tarr's legacy at Interior?
How would your approach to the Solicitor's job contrast or compare with Mr. Tarr's approach?

Do you agree with Mr. Tarr's opinion that the Secretary may sign 40 year water supply contracts without conducting any analysis pursuant to NEPA? Do you think that the Secretary has discretion to analyze the contracts under NEPA, even if he not required to do so?

Answer: Yes, I know Mr. Tarr. He was the Solicitor during the time that I served as Associate Solicitor for Energy and Resources between May 1987 and March 1989.

I believe that Solicitor Tarr's legacy at Interior will include, among other things, his reinstitution of an Incentive Awards Program and a regular schedule for considering promotions within the Solicitor's Office; his total revamping of the Solicitor's Manual; his prompt implementation of the Presidents' Executive Orders on Federalism and Takings; his publication of an additional volume of the Reclamation "Bluebook," a comprehensive supplement to the Bluebooks, and a Reclamation Reform Act Bluebook, all of which provide historical legal source material for the Reclamation program; and the organized style and quality of his Solicitor Opinions. In addition, Solicitor Tarr set an admirable standard of hard work and long hours in the Office.

If confirmed, my approach to the Solicitor's job will involve increased attention to personally visiting Regional and Field offices, more delegation of opinion writing responsibility to the Associate Solicitors, and increased attention to spending time "outside the building" in order to better develop the Office of the Solicitor's relationships with Congress and with my counterparts at Department of Justice, Department of Energy, Environmental Protection Agency, Federal Energy Regulatory Commission, United States Department of Agriculture, Office of Management and Budget and the White House.

Although it has been some time since I looked at that opinion, I understand that Mr. Tarr concluded that, so long as the Secretary chooses *not* to exercise his discretion to make substantive changes in the existing water service contracts, the contract renewals would qualify for a categorical exclusion from NEPA. He also concluded, however, that, should the Secretary exercise his discretion to make changes in the contracts, additional NEPA documentation might in fact be necessary. As you know, the Department is now in litigation over this issue (NRDC v. Hancock, CIV-S-88-1658-LKK (E.D. Cal.)). The case addresses the issue of the appropriate level of environmental analysis required before the Bureau renews the long-term water service contracts. To say anything further on this matter in light of the litigation would not be appropriate.

It is my understanding that CEQ regulations provide agencies with broad discretion to conduct environmental reviews under NEPA to assist in agency planning even if they are not required to do so by those regulations.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

2. Question: How do you characterize the Secretary's trust obligation to Indian tribes?

Answer: The trust responsibility has its origins in the assertions by the federal government of the power to control the sale of Indian land. That power was asserted prior to the independence of the United States in the Royal Proclamation of 1763 and after independence in the Indian Trade and Intercourse Act, which was passed by the first Congress in 1790 and is now codified in 25 U.S.C. § 177. With the authority to manage Indian property comes the responsibility to do it with care and prudence and for the benefit of the Indian owners. In addition to these obligations of the United States with respect to the management of Indian property, there is a more general trust relationship between the United States and the Indian people, as specified by treaties, statutes, executive orders and regulations and as interpreted by the courts. In implementing the relationship, there is an overriding responsibility on the part of our Federal Government to deal fairly with Indians. The trust responsibility applies not only to the Interior Department but to all other agencies of the federal government as well. It is, of course, the responsibility of the Executive Branch to implement the trust responsibility. Presidents Nixon and Reagan, and President Bush through Secretary Lujan, have issued policy directives to ensure that federal officials meet their trust responsibility. If Indians believe the Government is not acting in accordance with its trust responsibility they may seek injunctive relief to compel the Government to perform its duties or, if damage has already occurred, they may obtain damages through a breach of trust action.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

3. Question: How would you characterize the recent history of the Secretary's relationship with Indian tribes? Do you have an opinion on the future of Indian tribes within the United States?

Answer: From my observation, I would characterize the Secretary's relationship with tribes as good and with good prospects for the future. The Secretary's July 14, 1989, memorandum to Interior officials on improving coordination in Indian Affairs is an example of a commitment to facing Indian issues and dealing with them on a Department-wide basis. Another example is the Secretary's emphasis on settlement of Indian reserved water rights claims.

As to the future of Indian tribes within the United States, I believe there is a solid legal basis for continuation of the tribal level of government within our country's federal system for as long as each tribe wishes to maintain its tribal existence. I see continuing opportunities for tribes to attain self-sufficiency and chart their own course. I am quite optimistic concerning the future of Indian tribes within the United States.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

4. Question: Do you believe that the Bureau of Reclamation is limited in any respect -- as a legal matter -- from acting to fulfill the Secretary's obligations to fish and wildlife or to Indian tribes?

Do you think that the Bureau has consistently fulfilled the Secretary's obligations to fish and wildlife and Indian tribes?

If there are no legal limits on the Bureau's ability to fulfill the Secretary's responsibilities to tribes and fish and wildlife, and the Bureau has not consistently fulfilled those obligations, then the Bureau's failure must be the result of Department or Bureau policy. As Solicitor, would you advise the Secretary to reconsider that policy?

Answer: The Bureau of Reclamation, like all federal agencies, was created by legislation, and that legislation specifies the limits of the Bureau's authority and the obligations it must satisfy. The Reclamation Act of 1902 established the framework in which the Bureau operates. Since 1902, literally hundreds of statutes have been enacted which specify the Bureau's obligations and authorizations. For example, there are statutes indicating what facilities may and may not be built, how reservoirs may be operated, and for what purposes facilities may be used.

Other statutes, along with treaties and executive orders, establish the Secretary's trust obligations to Indians, and the Secretary's obligations to fish and wildlife. I understand that Secretary Lujan issued a policy statement on July 14, 1989, directing all agencies within the Interior Department to consider this trust responsibility to Indians in the conduct of all program operations. Differing statutes, however, may create conflicting obligations on the part of the Secretary or a later Congressional enactment may eliminate or modify a prior obligation. Because of various statutes and other authorities setting out his different responsibilities, the Secretary must often balance his competing obligations. He may sometimes be precluded from taking one course in one area by his statutory obligations in another area, however, he must always take into consideration his trust responsibilities and implement them to the extent possible.

To the best of my knowledge, the Bureau has fulfilled or intends to fulfill the Secretary's obligations to fish and wildlife and Indian tribes within the limits of its statutory obligations and responsibilities. I am aware, however, that some Bureau actions have been challenged successfully and that other actions are currently being challenged in ongoing litigation.

I am not aware of a Bureau or Department policy that might result in the Bureau failing to fulfill the Secretary's obligations to fish and wildlife or Indian tribes. Certainly, if I ever became aware of such a policy I would advise the Secretary of the Department's legal vulnerability.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

5. Question: Do you have an opinion on the relationship between the Solicitor's office and the Bureau of Reclamation? Bureau of Indian Affairs? USGS? Department of Justice? Can you think of means to improve these relationships?

Answer: Yes. I understand the Solicitor's Office enjoys an excellent working relationship with its client bureaus. As in any field, relationships can always be improved and I will endeavor to make improvements wherever possible. I will strive, if confirmed, to ensure that the Solicitor's Office continues to be fully responsive to its clients' legal needs and to render prompt and thorough legal advice when required. I believe regular meetings with our clients should be encouraged to foster continued communication so we can accommodate our work load to meet our clients' changing priorities.

In regard to the Bureau of Indian Affairs (BIA), BIA is the unit within the Department specifically responsible for administering the United States' government-to-government relationship and the federal trust responsibility with tribes and allottees. I have read the recent Report of the Investigative Subcommittee of the Senate Select Committee on Indian Affairs. The Solicitor's office work with BIA is directed heavily toward support of these unique and high priority missions discussed in the Report. The Solicitor's office must maintain a close working relationship with BIA. In the government-to-government area, for example, the Associate Solicitor, Indian Affairs, has accompanied the Assistant Secretary -- Indian Affairs, at his request, on several visits to consult with Indian tribes. I understand that daily working contacts between the Division of Indian Affairs and BIA is the normal course of business.

As to the Department of Justice, I understand the Solicitor's Office meets frequently with attorneys from the Lands Division and has ready access and a good working relationship with the Assistant Attorney General and his deputies. I also understand that efforts have been made to better coordinate litigation and litigation strategy in recent months. I believe it is imperative that we always seek to work more closely with those who handle our caseloads. I would also encourage my Regional and Field Solicitors to work closely with United States Attorneys and other Justice attorneys in their locales. I want to establish a good working relationship with the Assistant Attorney General through regular contact. I would use these contacts to determine the long term planning needs of the two Departments concerning

natural resources and Indian litigation. I also want to establish frequent contact and strong working relationships with the General Counsels of the Energy and Agriculture Departments, the Environmental Protection Agency, the Federal Energy Regulatory Commission and the Council on Environmental Quality to reconcile and coordinate interagency issues.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

6. If you are confirmed as Solicitor, what limits, if any, will you place on contacts between attorneys in your office and members of the Senate or Senate staff?

Answer: I understand and respect the importance of Congressional oversight. You may be assured that, if confirmed as Solicitor, I will seek to facilitate response to Congressional inquiries. In general, I do not intend to restrict contacts between Solicitor's Office attorneys and members of the Senate and Senate staff.

As a general matter, in order to assure proper consideration of Congressional requests and the smooth operation of the Solicitor's Office, I will attempt to keep myself informed of Congressional inquiries to the Office.

I understand that the Solicitor's Office has a longstanding procedure for reporting of Congressional inquiries. I think this is appropriate to assure proper consideration of these inquiries and to assure that, where Solicitor's Office attorneys are asked to state the position of the Department on a legal issue, the Solicitor's right as the Department's chief legal officer to speak finally on the issue is preserved. It was my experience as Associate Solicitor that this policy accommodated the appropriate Congressional need for contact with Solicitor's Office staff. I do also recognize that there are statutory provisions permitting Federal employees to privately contact the Congress. You may be assured that, if confirmed, I will respect these provisions.

To the extent that members of the staff of the Office are asked to comment for the Department on legislation or to submit testimony before a Committee on behalf of the Department, such comments or testimony are, of course, also subject to the normal Executive Branch clearance process.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

7. Question: Do you know that seven attorneys serve in the Branch of Water and Power within the Division of Energy and Natural Resources, while only two attorneys serve in the Branch of Water and Power within the Division of Indian Affairs?

Are these levels adequate?
Do you think this disparity in legal staffing on water issues is appropriate?
Does this situation place the Secretary at risk of compromising his trust responsibility to Indian tribes?
What should be done about it, if anything?
Even if you can't increase your budget, can't you move people around?
Do you known whether Energy and Natural Resources Division lawyers are working on Indian water issues? Is this a policy decision or just a result of under-staffing in Indian Affairs?
Do you known whether the Assistant Secretary for Indian Affairs has complained about this situation?

Answer: I understand that because of the recent initiation of a large number of Indian water rights settlement negotiations, which are of prime importance to both the Bureau of Reclamation and the Bureau of Indian Affairs, the workload of both branches has increased significantly. Further, I understand that all of the attorneys in both the Divisions of Indian Affairs and Energy and Resources are fully occupied with their present work assignments. Therefore, it would be difficult to take attorneys away from one branch without jeopardizing the adequacy of the legal advice available to the client represented by the branch losing the attorneys. If confirmed, I will study, with each of the relevant Associate Solicitors, the workload of the attorneys in each Division to determine if moves could be made within the Divisions which will assist in minimizing workload crises within individual branches and then make appropriate budgetary recommendations.

Thomas Sansonetti
Solicitor-Designee

Senator Bradley

8. Question: Several years ago, the Bureau of Reclamation shut down a drainage system in the San Luis Unit of the Central Valley Project when it became clear that the drainage was damaging fish and waterfowl at Kesterson National Wildlife refuge. In part, the Bureau acted out of concern that it might be in violation of the Migratory Bird Treaty. The Department's own studies now indicate that wildlife refuges throughout the West are suffering similar agricultural drainage contamination. Moreover, the Department's studies are revealing that drainage evaporation ponds operated by reclamation project farmers in California (Tulare Basin) are killing waterfowl. Based on these facts, and your knowledge of the situation, how would you advise the Secretary to meet his responsibilities under the Migratory Bird Treaty Act?

Answer: The nature and extent of the responsibilities imposed by the MBTA to avoid harm to migratory waterfowl has been the subject of intensive legal analysis by this Department and the Department of Justice. This legal analysis culminated in a letter from the Department of Justice on October 7, 1985 advising this Department of the standards applicable to this situation. In essence, Justice advised that Department of the Interior officials must act consistent with authorities provided by the Congress and with due care, and that there must be a good faith attempt to protect, to the extent practicable under the circumstances, the bird populations subject to protection under the MBTA. This standard will apply to the Tulare Basin matter also. This issue has been very carefully reviewed by the Department of Justice in providing us with advice in 1985, and if confirmed as Solicitor I will advise the Secretary in accordance with the advice provided by the representatives of the Lands Division of the Department of Justice.

Thomas L. Sansonetti
Solicitor-Designate

Senator Bradley

9. If confirmed as Solicitor, will conflict of interest rules or other ethical considerations bar you from involvement with the Wind River Indian water rights situation?

Answer: No. As a private practitioner in Wyoming, I did not undertake any representational activities that would bar me from representing the United States in connection with this situation. My current position as the Administrative Assistant to Representative Craig Thomas similarly does not present a bar. The Wyoming delegation has not taken a position on the merits of the Wind River matter. The delegation's position has been to encourage and facilitate negotiation among the parties.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

1. Question: The issue of water rights in wilderness has been gaining momentum in recent years. Many wilderness proponents are advocating that new wilderness bills should include language that expressly reserves federal water rights for wilderness. Folks on the other side want strong states rights language. Given the current solicitors opinion that the Wilderness Act of 1964 does not imply any reserved water right for wilderness some believe that there is no need to include water rights language in new wilderness bills. What is your feeling on this issue.

Answer: In a July 26, 1988 opinion, the Solicitor did conclude that Congress did not intend to implicitly reserve water rights in designated wilderness areas. The Attorney General in the Reagan Administration concluded that the opinion correctly assessed the congressional intent. I understand that in June 1989, in response to a letter from Congressmen Udall, Vento, and Miller urging the current Attorney General to review the former Attorney General's decision, the Assistant Attorney General, Legislative Affairs, stated that the Justice Department sees no reason to reverse the decision and, thus, the Solicitor's Opinion remains the litigation position of the United States government. I agree with the Opinion.

Since the Wilderness Act did not imply reserved water rights for wilderness areas, Congress must expressly reserve such rights in legislation establishing specific wilderness areas if it wishes to establish federal water rights for those areas. I would note, however, that reserved water rights are not the only means whereby the federal government can meet water needs for wilderness areas. The Department of the Interior may secure water by appropriation under state law or may purchase, or otherwise acquire, water rights. In addition, wilderness areas are often designated on other lands such as national parks which already have legislatively reserved water rights.

Thomas Sansonetti
Solicitor-Designate

Senator Burns

2. Question: U.S. Highway 191
Yellowstone National Park is currently in the process of preparing an Environmental Assessment to determine the resource impacts of permitting the continued use by commercial traffic of U.S. Highway 191 through the park for approximately 22 miles. According to the recently published draft EA, the park was directed by the Office of the U.S. Solicitor to bring current (and historical) commercial use on U.S. Highway 191 into compliance with existing regulations regarding commercial traffic within national parks or to promulgate regulations specifically allowing such use to continue. The draft EA examines the effect of commercial traffic on Highway 191 through the park on public safety, visitor experience, noise levels, roads, bridges, cultural resources and flora and fauna. Although U.S. Highway 191 is a major travel route linking Montana to parts of eastern Idaho and western Wyoming, there was no examination in the EA on the effects on local community economic stability, the increased cost of transporting goods or the possible harm to the environment outside the park by forcing commercial carriers to use routes that are longer and potentially more dangerous. There apparently was also little or no attempt by the Park Service to involve the State Highway Departments or the State Commerce Departments from Montana and the surrounding affected states. This leads to three questions. First, if this case of commercial traffic through a National Park an isolated one, or is it a fairly common occurrence throughout the United States? Second, if this is a fairly common occurrence, why is this study being done on by a single unit of the National Park System instead of being resolved with some new system wide standards? Third, would it be your policy as Solicitor when directing such future reviews to also direct the respective agency to coordinate their review with other state and federal agencies to ensure the reviews cover all bases?

Answer: Initially, let me state that I am assured that many of the concerns over the economic impact of the regulation will be addressed in the Department's decisionmaking process and in the regulatory impacts analysis required by the Administration before regulations may be finalized. Accordingly, a forum will exist for these issues to be resolved.

Many highways run through areas of the National Park System. But, very few highways in park areas are also federally owned and managed. It is the federally owned and managed character of the highway right of way that makes this issue unique and requires the NPS to address the application of its regulations. The Park Service regulations prohibiting commercial traffic only apply to

federally owned and managed highways. This issue arose in only one other area of the National Park System - Delaware Water Gap National Recreation Area. Because of the limited nature of this situation, the NPS has not developed a System-made review.

As Solicitor I would always encourage my client agencies to consult with and seek the advice of state and local governments in the promulgation of regulations or preparation of NEPA documents.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

3. Question: Would you agree that the economic future and viability of western communities is heavily dependent on the ability to use and enjoy public land resources and on the continuance of multiple use management?

Answer: Yes. I have lived in and enjoyed the great State of Wyoming for many years. That experience has driven home to me the importance of the multiple uses of the public lands and their resources to the quality of life in the western states.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

4. Question: There seems to be a trend or movement toward federal land management that locks up the land for single use or preservation of specific resources (i.e. wilderness, endangered species, parks, buffer zones, etc.) Do you believe many federal land resources can be protected under multiple use management?

Answer: Yes, I do. The theory of multiple use management is that most lands can be used for a variety of purposes without any single use unnecessarily interfering with the other uses. Many uses are entirely compatible with each other, or need only seasonal restrictions to protect the land's ability to satisfy these various uses on a sustained basis. This is the Department's policy and, if confirmed as Solicitor, I will give legal advice to the Secretary and others in the Department to assist them in carrying out this policy.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

5. Question: As Solicitor, you will be faced with decisions that will affect the future of Montana and the entire West. Will you protect and support the concept of multiple use management of federal lands?

Answer: Yes, Senator. If confirmed as Solicitor it will be my responsibility to advise the Secretary and Interior agencies on the legal aspects of their various duties, and thus to assist them in enforcing and administering the laws enacted by Congress. The Federal Land Policy and Management Act of 1976 mandates multiple use management as the basic and primary approach to administration of the public lands. I will indeed protect that concept as my professional obligation, but do so willingly, since I personally support the concept of multiple use and sustained yield.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

6. Question: Are you committed to protecting private property rights of our nation's landowners?

Answer: Yes. The question you raise suggests concern that actions by the Federal Government may have the effect of denying private property owners the right to the use of their property. Such action is frequently known as inverse condemnation. When inverse condemnation cases are brought against the Government by aggrieved property owners, and the United States loses, it is the taxpayer who foots the bill. It is an important part of the responsibility of the Solicitor to assure that the Department is careful about private property rights. In 1988, in recognition of the important role the Solicitor plays in advising the Department about constitutionally protected private property rights, the Secretary of the Interior designated the Solicitor as Takings Officer to assure compliance with Exec
utive Order 12630. That Executive Order requires careful consideration of private property rights by Federal agencies.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

7. Question: How would you balance the private property rights with the many laws, regulations, and proposals requiring specific protection for such resources as wetlands and endangered species?

Answer: The Executive Order on Takings discussed in the answer to question 6 suggests a common sense approach for federal agencies. The Executive Order was issued by President Reagan in 1988 to ensure that Federal policymakers consider carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. The Order was supplemented by Administration-wide Guidelines in 1988, and specific Interior guidelines in 1989.

The approach is straightforward: a policymaker, in consultation with legal counsel, must ask whether a proposed action affects someone's property rights. If an action does, the policymaker and counsel then review the law and cases to see if the action is one that the courts might conclude has "taken" private property. If so, then the policymaker should consider alternatives to the action, if possible. Finally, the policymaker would estimate what the monetary cost of proceeding with an action might be if the action is held to be a "taking" in court.

This basic process, when fully implemented, provides policymakers with important information on the consequences of actions that might affect private property. It is an approach that ensures that the policy goals of environmental protection are met in a manner that is fully cognizant of private property rights.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

8. Question: There are numerous proposals before Congress calling for preservation and protection of "viewsheds", "biological diversity", "ecosystems", and "watersheds" that would require massive land acquisition by the federal government and threaten private landowners. Considering that the government already owns one-third of the land in our nation, that there is a huge back log in the maintenance needs of these lands, and that there exists an equally long back log of land that has been approved for acquisition but is yet to be funded, would you support such acquisitions?

Answer: The Department of the Interior through its bureaus engages in an extensive process of determining acquisition priorities. The budget request for land acquisition under the authority of the Land and Water Conservation Fund is then subject to Administration and Congressional consideration through the appropriations process. If confirmed as the Secretary's legal advisor, I would only be involved in the process to ensure that acquisitions are done consistent with law, and to address any related private property issues raised by other forms of Departmental action.

Thomas L. Sansonetti
Solicitor-Designate

Senator Burns

9. Question: Would you recommend a veto of legislation presented to the President that seriously threatens private property rights?

Answer: It is my hope that legislation involving this Department posing signifcant inverse condemnation risks could be re-evaluated before passage to consider less intrusive alternatives. Absent such modification, my role as Solicitor would be to assist the Secretary in advising Congress and the President of the adverse implications of such legislation, including the prospect of significant financial judgments against the United States and actions that seriously threaten constitutionally protected private property rights.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

1. Question: Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights (March 15, 1988), requires all executive agencies to conduct Takings Implication Assessments prior to taking any action which might result in a taking of private property compensable under the Fifth Amendment to the Constitution. Do you know if this Executive Order has been implemented to date within the Department of the Interior? If so, has the Department complied with the Attorney General's Guidelines for the Evaluation of Risks and Avoidance of Unanticipated Takings?

Answer: I understand that the Order has been implemented at Interior. In November of 1988, the Secretary appointed the Solicitor as the Takings Officer for the Department to assure compliance with the Order, and directed each bureau director to be responsible for the successful implementation of the Order. The Solicitor's Office is responsible for coordinating with the various bureaus and offices the proper and uniform implementation of the Order. I am advised that the Department has complied with the Attorney General's Guidelines and worked with the Department of Justice to draft Interior-specific guidelines, which were issued in May, 1989.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

2. Question: There is a great deal of concern that, in the effort to provide protection for the nation's fish, wildlife and plants, insufficient consideration is being given to the rights of property owners. What safeguards does the Department of the Interior now employ to ensure that adequate consideration is given to the rights of property owners?

Answer: I understand the Department has had training sessions on the Order, on Takings so that senior managers more fully understand

the implications of their decisions on private property rights. This is a practice I endorse as consistent with informed decisionmaking. When the Government is insensitive to private property rights it pays a penalty by losing lawsuits in the Claims Court under the doctrine of inverse condemnation. It is important to include in the regular planning and decision process the consideration of private property concerns. It is my understanding that recent Supreme Court cases and the Executive Order have heightened Departmental awareness of these concerns.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

3. Question: Does Executive Order 12630 provide sufficient opportunity and means for policymakers to consider property owners' rights which may be impacted by efforts to protect the nation's fish, wildlife and plants? If not, is there a need to legislate in this area?

Answer: While many statutes permit discretion for policymakers to avoid adversely affecting private property rights, certain statutes direct the Secretary to avoid consideration of economic factors. In those cases where the statutes do not limit discretion, I understand the Executive Order provides a useful tool for policymakers to weigh the prospective costs and merits of their actions. In cases where the statutes limit discretion, a takings analysis may still be performed, but with the recognition that alternatives cannot be considered by the policymaker. I understand the Executive Order has been implemented at Interior. The Solicitor has been designated by the Secretary as the Takings Officer for purposes of compliance with the order. Interior and Justice drafted specific guidelines for the Department, which the Attorney General issued in 1989. Accordingly, I do not believe there is a need to legislate in this area.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

4. Question: Do you believe that states have primacy over water quantity and quality?

Answer: The right of states to control their waters, as well as the relationship between the federal government and states with regard to water, has been extensively addressed by Congress and the courts. The Department has supported the principle of State primacy over water appropriation and management, except where inconsistent with express Congressional directives. I am aware that the Secretary supports the important role of the states in water matters, and I look forward to working with him to apply this principle in matters as they arise.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

5. Question: Reserved water right claims have been an ongoing source of friction between the states and the federal government. One of the biggest sources of controversy has been wilderness reserved water right claims. The Department of the Interior recently issued Solicitor Opinion M-36914 (Supp. III), which concludes that Congress did not intend to create [implied] reserved water rights for wilderness areas. This opinion reversed a prior solicitor opinion. What is your opinion regarding wilderness reserved water rights?

Answer: In a July 26, 1988 opinion, the Solicitor did conclude that Congress did not intend to implicitly reserve water rights in designated wilderness areas. The Attorney General in the Reagan Administration concluded that the opinion correctly assessed the congressional intent. I understand that last year, in response to a letter from Congressmen Udall, Vento, and Miller urging the current Attorney General to review the former Attorney General's decision, the Assistant Attorney General, Legislative Affairs, stated that the Justice Department sees no reason to reverse the decision and, thus, the Solicitor's Opinion remains the litigation position of the United States government. I agree with that Opinion.

Since the Wilderness Act did not imply reserved water rights for wilderness areas, Congress must expressly reserve such rights in legislation establishing specific wilderness areas if it wishes to establish federal water rights for those areas. I would note, however, that reserved water rights are not the only means whereby the Federal government can meet water needs for wilderness areas. The Department of the Interior may secure water by appropriation under state law or may purchase, or otherwise acquire, water rights. In addition, wilderness areas are often designated on other lands such as national parks which already have reserved water rights.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

6. Question: What do you think the Federal role should be vis-a-vis the States' in managing federal public lands?

Answer: In my view, government actions affecting federal lands should be taken after close coordination, consultation and cooperation with the states to ensure that the states' views and concerns are taken into account consistent with the President's Executive Order on Federalism. If confirmed, I will give legal advice to the Department in carrying out this policy. The Department carries out its management responsibilities and makes decisions consistent with the Federal Land Policy and Management Act. Within the limits of the law, States' views should be among the foremost considerations in our deliberative process.

Thomas L. Sansonetti
Solicitor-Designate

Senator James A. McClure

7. Executive Order 12612 establishes a presumption against preemption of state laws. What steps will you take to ensure that the Department complies with this Executive Order?

Answer: In 1988, the Department issued an implementation plan for E.O. 12612. The plan provides procedures for analyzing proposed policies that have federalism implications. I understand in February 1990, Secretary Lujan issued a memorandum to all assistant secretaries and bureau heads reiterating the importance of E.O. 12612.

The Department's implementation plan provides a sound framework to assure compliance with the substantive policies of the Executive Order. If confirmed as Solicitor, I will insist the Office utilize the procedures provided by the plan and that the substantive policies of the Order be observed.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

8. Question: A recent Bureau of Indian Affairs memorandum directed that hazardous waste disposal facilities on Indian reservations must comply with all federal, state, local, and tribal laws. Do you intend to continue this policy? Will you work to encourage further cooperation and coordination between state, federal, and tribal governments regarding environmental problems on reservations, such as hazardous wastes, water pollution, and control of air pollution sources?

Answer: Hazardous waste disposal facilities on Indian reservations must comply with all applicable laws. Any such facility would, at a minimum, be subject to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act. To the extent an Indian tribe were to lease reservation lands for a hazardous waste disposal facility, the Secretary could condition his approval of the lease on lessee compliance with all state, local, and tribal law. It is essential that federal, tribal, and state governments work together to address environmental problems on Indian reservations. If confirmed, I will encourage the Bureau of Indian Affairs and the tribes to coordinate closely with state and local governments.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

9. Question: The relationship between the federal and state governments is crucial in many department programs. What role do you see for state officials such as governors, attorneys general, and land managing agencies, in developing departmental policies?

Answer: In my role as legal advisor to the Secretary, I intend to be open to all points of view on legal issues that come before me and will certainly have an open door to hear the views of governors, state attorneys general and other state officials. President Bush has recently reaffirmed his commitment to the Executive Order on Federalism. This will paly an important role in developing Department policies. On policy matters, Secretary Lujan has, as you know, already stressed the importance of assuring that the views of the states are considered in Departmental policymaking. I certainly will be proactive and follow the Secretary's lead in this area.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

10. Question: Many royalty dispute matters which have the potential for significantly affecting states are not discussed with the states by the Department. For example, a recent federal case by federal lessees against the federal government on their royalties were due on take-or-pay payments was of utmost importance to several states. However, unless the states specifically sought updates on the progress of the litigation, none were provided; neither did the federal government seek any sort of state "friend of the court" support, or ask for any state input. The same was true with the decision not to appeal from a circuit court decision. Will you establish meaningful and timely communication with states to: (a) keep states advised on litigation which could affect them and in which and interest is expressed, and (b) seek state input on these matters?

Answer: When we are aware of States' particular interest in specific litigation, we will endeavor to keep them informed through such organizations as the Council of Western Attorneys General, the State-Tribal Advisory Committee, and the Royalty Management Advisory Committee. Ultimately, the disposition of litigation brought by or in defense of the United States is a matter for the Department, in consultation with the Department of Justice and after consideration of the views of interested parties, to determine in accordance with the law.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

11. Question: What criteria do you intend to use in selecting top administrators and assistants in the Solicitor's office? What attributes and expertise would you like them to bring to the office? What type of role would you want them to have in the decision making process?

Answer: Top administrators and assistants should be qualified and experienced and have a sincere desire to support the mission of the Department of the Interior.

If confirmed, I intend to select people who have experience in the issues they will be dealing with so that they can be productive early on in their tenure.

With respect to legal questions, I will expect the attorneys to present well-reasoned arguments for the legal interpretation most favorable to their client bureaus and to defend those positions in open discussions with attorneys from other divisions. Once I make a decision with respect to a legal position in a certain matter, I will want each attorney to ensure that their client bureaus' interests are represented while carrying out my decision.

With respect to policy matters, if confirmed, I will expect attorneys to lay out fully and objectively the legal implications of each policy option. Above all I will insist upon integrity.

Thomas L. Sansonetti
Solicitor-Designate

Senator McClure

12. Question: Under several provisions of the Indian Gaming Regulatory Act the Secretary is required to regulate gaming of tribal lands consistent with local state law. How will you advise the Secretary to determine the requirements of local state law? Will you seek the opinion of the state attorneys general on their state laws?

Answer: If confirmed, I would advise the Secretary that pursuant to the Gaming Act, an Indian tribe may engage in Class II gaming (bingo and certain card games) on Indian lands if the state permits that form of gaming for any purpose by a person, organization, or entity. For example, if a state permits bingo for charitable purposes, any Indian tribe in that state would be authorized to conduct a high stakes bingo game on Indian lands. An Indian tribe could only engage in Class III gaming (all other forms of gaming) if the state permits Class III gaming and the tribe enters into a compact with the state. I would seek the opinion of the state attorneys general or the appropriate regulatory and enforcement agencies within the states on these matters.

APPENDIX III

Additional Material Submitted for the Record

NWRA

PRESIDENT — Raymond R. Rummonds
VICE PRESIDENT — James W. Trull
TREASURER — Ivan W. Flint
EXECUTIVE VICE PRESIDENT — Thomas F. Donnelly

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April 20, 1990

The Honorable J. Bennett Johnston
Chairman, Energy and Natural Resources Committee
United States Senate
Washington, DC 20510

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Dear Mr. Chairman:

On behalf of the membership of the National Water Resources Association, I am writing to express the Association's strong support of President Bush's selection of Thomas L. Sansonetti to be the Solicitor of the Department of the Interior.

The National Water Resources Association (NWRA) is a nonprofit federation of state associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource, WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

We believe that Mr. Sansonetti's background and experience make him an outstanding choice for this important post. Furthermore, his track record indicates that he understands the importance of maintaining a balance between protecting the quality of our environment and wise use of Nation's natural resources.

The National Water Resources Association enthusiastically endorses Thomas L. Sansonetti for the position of the Solicitor of the Department of the Interior.

I request that this letter be included as a part of the hearing record on Mr. Sansonetti's confirmation. Should you have any questions or desire additional information, please do not hesitate to contact me personally.

Sincerely,

Tom Donnelly

OFFICIAL COMMITTEE FILE
PLEASE RETURN

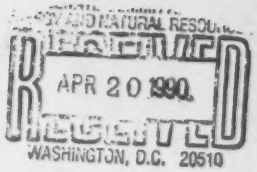
Thomas F. Donnelly
Executive Vice President

From the desk of Fred S. March,

former Interior Department lawyer.

URGENT MATTER

EXPRESS MAIL -- RETURN RECEIPT REQUESTED



P.O. Box 285
Erie, CO 80516

OFFICIAL COMMITTEE FILE
PLEASE RETURN

April 18, 1990

The Honorable J. Bennett Johnston, Chairman
Senate Committee on Energy and Natural Resources
Senate Office Building
Washington, D.C. 20510

Dear Chairman Johnston:

I was informed only very recently that a lawyer from the State of Wyoming is presently scheduled for a Confirmation Hearing on April 20, 1990 before your Senate Committee.

While I do not know the name of the nominee who has been nominated by President Bush to fill the high post or position of Solicitor, U.S. Department of the Interior, I feel it is necessary for me to supply to you. for the benefit of all the members on your committee, a copy of my letter dated April 6, 1990, together with the enclosures identified in the said letter, addressed to Ms. Jennifer Salisbury, Acting Solicitor, U.S. Department of the Interior.

Please do not construe the content of my letter to Acting Solicitor Salisbury as a reflection on her "Solicitorship" as Acting Solicitor of the U.S. Department of the Interior for certainly it would be improper for me to do so considering her apparent short period in the Acting Solicitor position. Also, please do not construe my letter of April 6, 1990 as a reflection on Secretary Lujan, Jr. for I do not know whether he has been properly briefed on the oil shale mess in Interior.

Nevertheless, the content in my letter of April 6, 1990 and the enclosures to said letter, raise matters of paramount importance to the American people, our Federal Government, and the Interior and Justice Departments, which matters require corrective action without delay, especially in the Interior Department, as a good deal of these matters will certainly require the immediate attention and action of the Secretary of the Interior and of the forthcoming new Solicitor for the Department of the Interior, if the above mentioned nominee is confirmed by the U.S. Senate.

Accordingly, I urge you and the other committee members to question the nominee for the position of Solicitor, U.S.

Department of the Interior, on all matters raised or discussed in my letter of April 6, 1990, including the matters raised or discussed in the enclosures to the said letter of April 6, 1990, so that oil shale claim matters pending in the Bureau of Land Management, in the U.S. Department of the Interior, in the Congress and in the Court or Courts, be handled on the merits, with full knowledge of all the facts and the proper application of the law. The rule of law as to pre-1920 unpatented oil shale claim matters should no longer be circumvented in our Federal Government.

In my view, there has been and there presently exists a breakdown in our Federal Government operations to the point that the various Federal oil shale land scandals have become too big for our Federal Government to properly handle. Congress has so far failed in the proper handling of oil shale claim matters.

I believe the new Solicitor, when installed, cannot avoid taking a central leadership role in the Interior Department, with the assistance of certain career attorneys in the Solicitor's Office in Denver, Colorado, to help the Secretary of the Interior Manuel Lujan, Jr., to shape up the operations on oil shale claim matters in the U.S. Interior Department so as to prevent the further giveaways of Federal oil shale lands under the guise of pre-1920 unpatented oil shale mining claims. The new Solicitor will also have to confront the problem of what our Federal Government must do to clean up the questionable past oil shale land disposals by the Interior Department.

The new Solicitor will have to encourage Secretary Lujan to place all lawyers in the Interior Department, or its bureaus or agencies, under the supervision and direction of the Office of the Solicitor and to take steps to make sure that career attorneys in the Solicitor's office in the Field be properly involved on a daily basis in the handling of multi-billion-dollar, if not trillion-dollar, Federal oil shale land matters in accordance with the law and so that oil shale mining claim contests, to be instituted by the Bureau of Land Management, with the advice and review of such Field attorneys, be properly prepared prior to hearings held before Administrative Law Judges. The Committee members should keep in mind that the BLM is not properly staffed with qualified investigators and mining law experts to assure that oil shale claim matters are properly handled in the BLM without the proper involvement on a daily basis of career attorneys in the Solicitor's Office in the Field.

The new Solicitor will have to face the fact that he will have to take steps with the Justice Department to straighten out the mess which appears apparent to me to stem from the improper handling of oil shale claim matters in the Field and in Washington, D.C., as exemplified by the

apparent deficiencies, in the way the Interior and Justice Departments have so far handled matters underlying and in the Marathon case.

A vacancy in the position of Solicitor, U.S. Department of the Interior, for any substantial length of time, is clearly not in the public interest and can often lead to uncertainty with resulting poor operations in the Office of the Solicitor, whether in the Field or in Washington, D.C. The Office of the Solicitor needs to be empowered, by either the Secretary or by Congress or by both, to take an active role in the decision making processes in the Interior Department on multi-billion-dollar energy and natural resource matters to prevent the occurrence of mismanagement, maladministration, if not fraud, in the handling of such matters.

The writer, Fred S. March, hereby reserves all ownership rights to this letter. This letter and the enclosures hereto may be inserted in the Confirmation Hearing, and I so request that this be done.

Respectfully,

Fred S March

Fred S. March

P.S. Please note that Senate Report 101-259 and Senate Report 101-260, both fail to reflect the fact that the decision in Tosco v. Hodel (611 Fed. Supp. 1130, U.S. D.C., Colorado, May 1, 1985) has been vacated. This is a serious deficiency in said two Senate Reports. Also these mentioned Senate Reports fail to set out an analysis of how the bills, if enacted into law, the matter of the above-mentioned Senate Reports, would affect the claims involved in the Marathon case. This constitutes another deficiency in the said Reports. There exists, in my view, other major deficiencies in the bills, the matter of the above Senate Reports, and in the said Reports.

Enclosures are noted in this letter.

Temporarily at:
P.O. Box 285
Erie, Colorado 80516

Permanent:
P.O. Box 742
Ocean Shores, WA 98569

From the desk of Fred S. March,

former Interior Department lawyer.

URGENT DEADLINE MATTER

Express

~~CERTIFIED~~ MAIL -- RETURN RECEIPT REQUESTED

April 6, 1990

Ms. Jennifer Salisbury
Acting Solicitor
Office of the Solicitor
U.S. Department of the Interior
1849 C. Street, NW
(Mail Stop - 6352, M.I.B.)
Washington, D.C. 20240

Dear Acting Solicitor Salisbury:

I. ENCLOSURES AND COMMENTS:

In reference to my conversations with you on April 5, 1990, I am enclosing THE FOLLOWING SELF-EXPLANATORY DOCUMENTS WHICH HIGHLIGHT CERTAIN PROCEDURAL AND SUBSTANTIVE MATTERS REQUIRING SECRETARY LUJAN'S AND YOUR ATTENTION AND CORRECTIVE ACTION:

1. Copy of my letter dated September 19, 1989 addressed to Senators Patrick J. Leahy and J. Bennett Johnston.

Please note especially the existence of the four legal briefs mentioned in the letter relating to oil shale claim matters put together by me while I was an attorney in the Office of the Regional Solicitor, Denver, Colorado. You should be able to borrow the four briefs from Senior Counsel Patricia Beneke of the Senate Energy and Natural Resources Committee, if copies of said briefs cannot be readily obtained from the Office of the Regional Solicitor, Denver.

Please note the content in the first full paragraph on the second page of the above letter. Notwithstanding the issuance by BLM of certain final certificates (1st part thereof) on certain claims not yet patented and notwithstanding earlier adjudications completed by BLM on certain claims still pending before the BLM, Secretary Lujan, Jr., should order the BLM to reevaluate the validity or invalidity of all oil shale claims before the BLM as it should be apparent to lawyers in the Office of the Solicitor, Denver, that adjudications so far made on pending claims are, more probable than not, defective in that facts known or ascertainable as to each claim have not been developed under defective BLM procedures and the law applicable to each pending claim has not been adequately applied in the BLM so as to properly determine whether each of the pending claims are valid or invalid.

BLM has not properly used the services and has not properly sought the advice of lawyers in the Office of the Regional Solicitor, Denver, from on or about the middle of August 1986 so as to develop a plan of action for contesting pre-1920 unpatented oil shale claims on all available charges. The breakdown between certain officials then in the Department of the Interior and the Office of the Regional Solicitor, Denver, on oil shale claim matters apparently resulted from the

irresponsible, if not illegal actions in our Federal Government, which culminated in the Settlement Agreement dated August 4, 1986 leading to the improper disposal of 82,000 acres of Federal oil shale lands, pursuant to and subject to the terms and provisions of said Agreement, containing upwards to 42 billion barrels of recoverable shale oil. Interior has not yet attempted to rebut this estimate.

The "exclusion," if so, of the most knowledgeable and experienced lawyers in the Office of the Regional Solicitor, Denver, from the handling of oil shale claim matters in the BLM and in the Department of the Interior, in itself constitutes a National disgrace and a significant National scandal that can no longer be condoned or covered up. Corrective action on this matter can no longer be delayed.

The American people should be able to expect that the Department of the Interior staffed with 60,000 or more officials and employees can carry out its statutory missions in compliance with the law rather than have its statutory missions perverted by an outright disregard of applicable law and by ignoring the views, advice and the work product of honorable career staff attorneys in the Department, under the Solicitor, in Denver. This is known to have occurred in the handling of matters involving Tosco v. Hodel.

2. Copy of my letter dated January 19, 1990 addressed to Senator Patrick J. Leahy, without enclosures mentioned in the letter.

Please note that the first full paragraph on page two of said letter refers to the Marathon case and Mr. Cason's Instructions (see S. Hrg. 101-248, pages 254 through 312, but specifically pages 272 and 273). Mr. Cason's Instructions, insofar as known to me have not yet been withdrawn by Secretary Lujan, Jr. These mentioned Instructions are, in my view, in error, if not totally inadequate, for the proper application of applicable law to pre-1920 unpatented oil shale mining claims by staff in the BLM and in the Interior Department.

I cannot stress too strongly that the "Cason Instructions," if not revoked by Secretary Lujan, Jr., can cause the Department of Justice to fail in the handling of the Marathon case. See Exhibit C to the Complaint filed by Marathon Oil Company, et al.

I recommend that Secretary Lujan, Jr., and you immediately request the Justice Department to take steps to cause Judge Finesilver to not close the record in the Marathon case pending the reconsideration in the Interior Department and in the U.S. Justice Department of the propriety, if any, of the "Cason Instructions," reflected on pages 272 and 273 of S. Hrg. 101-248, and as implemented by the Director of the BLM in the Memorandum reflected on pages 274 and 275 of S. Hrg. 101-248.

3. Copy of my letter dated January 20, 1990 addressed to Senators J. Bennett Johnston and Jeff Bingaman, without enclosures mentioned in the letter, except that a copy of the "Draft Letter of September 5, 1989 Proposed to be Sent to Mr. Hughes" is attached to said copy of letter dated January 20, 1990.

These above two documents are, in my view, extremely rich in content and merit detailed study and analysis by Secretary Lujan, Jr., and you without delay.

I must add that the copy of the "Draft Letter" contains information that, in my

view, to a large extent may be used to rebut or refute some of the errors contained in the Statement of Mr. James M. Hughes reflected on pages 25 through 42 of S. Hrg. 101-248; and in Senate Report 101-259 (pertaining to S. 30, as amended by the Senate Energy and Natural Resources Committee), pages 10 through 18; and in Senate Report 101-260 (pertaining to H.R. 2392, as amended by the Senate Energy and Natural Resources Committee), pages 10 through 18. In addition, please read the analysis in my letters and Statement reflected on pages 254 through 271 of S. Hrg. 101-248, in connection with the content of the Statement given by Mr. Hughes.

In a quick reading of the content in S. Hrg. 101-248, I detected, what I regard to be, certain substantive errors on pages 30, 31, 32, 40, 100, 117, 118, 119, 172, 173, 174, 193, 195, 198, 199, 205, 210, 216 and 225. I suspect that perhaps some of the most experienced lawyers in the Office of the Solicitor, Denver, that have knowledge of pre-1920 unpatented oil shale claims and the law applicable to them can easily brief you on what they find to be erroneous in the Statement by Mr. Hughes. You should request these lawyers in Denver to prepare an accurate written report to point out errors, if any, in the Hughes Statement in S. Hrg. 101-248.

A copy of my Statement dated October 20, 1989, consisting of 21 pages plus attachments thereto, submitted for the record of the hearing held before Chairman Rahall's House Subcommittee on Mining and Natural Resources, on October 7, 1989 at Eugene, Oregon, on certain claims covering 780 acres (patented by the BLM on October 10, 1989) in the Oregon Dunes National Recreation Area, referred on page 3 of my letter dated January 20, 1989, mentioned above, was sent to Secretary Lujan, Jr., by me, but I have not received a response from Secretary Lujan, Jr., to the content in my October 20, 1989 Statement. I request that you inform me whether anyone in the Office of the Solicitor, Washington, D.C. has been requested by anyone in the Interior Department to advise what corrective action should be taken in the Department to cause the Attorney General to institute a suit to cancel the patent or to recover the value of the lands patented on October 10, 1989.

4. A copy of my letter dated February 21, 1990 addressed to Senator Howard M. Metzenbaum, without enclosures mentioned in the said letter.

II. ADDITIONAL INFORMATION:

With regard to additional background information pertinent particularly to oil shale claim matters, I recommend that you read the following mentioned S. Hrgs. on oil shale mining claims and related matters:

a. S. Hrg. 101-527 (held on October 16, 1987), particularly pages 185 through 286. For excellent work done in the Denver Regional Solicitor's Office, see pages 243 through 260 of S. Hrg. 100-527.

b. S. Hrg. 100-744 (held on April 22, 1988) particularly pages 265 through 307.

c. S. Hrg. 101-248 (held on July 31, 1989) particularly pages 226 through 312.

The above S. Hrgs. can be obtained by you by calling Senate Subcommittee staff for Mineral Resources, etc. The phone number is 224-2383.

III. LITIGATION AND OTHER CONCERNS:

CONCERNS STEMMING FROM THE HANDLING BY INTERIOR AND JUSTICE DEPARTMENTS OF CIVIL ACTION NO. 89-1829, KNOWN AS MARATHON OIL COMPANY, ET AL., V. MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR, ET AL., PENDING IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO.

When I observed on April 4, 1990 the argument before Judge Finesilver in this above case, I formed an impression without examining the documents filed of record so far in the case that the Interior and Justice Departments have so far failed to evaluate whether the so-called final certificate on the claims issued by the BLM was issued illegally since it appears that the claims in the case had been declared null and void in the 1930's. Although I have not examined thoroughly the old contest file or files of the GLO which apparently contain one or more decisions which on the surface appear to have declared the claims in the Marathon case null and void, I can't help but feel that the BLM acted without authority of law in issuing the so-called final certificate if in fact the applicable decision or decisions had the legal effect of a valid judgement which declared the claims underlying the Marathon case null and void.

No mention of the existence of such decision or decisions, if it be a fact, was raised in the oral argument before Judge Finesilver. It appears that the Interior and Justice Departments have failed to raise all affirmative defenses in the Government's answer filed in Civil No. 89-F-1829. This appears to be true in connection with the probable issue relating to the probable improper issuance of the final certificate if in fact the claims involved in the Marathon case had been effectively declared null and void. If the claims had been effectively declared null and void prior to the issuance of the final certificate, it would appear that the complaint could be dismissed by affirmatively pleading and proving that there does not exist any claims to be patented in the Marathon case. Failure to plead all available affirmative defenses in behalf of the United States in this case could likely result in a res adjudicata determination and the Government on appeal to a higher court probably could not reopen the record so as to get consideration of the issues not timely raised in the answer to the complaint in the Marathon case. Possible waiver of defenses available to the United States would appear to be a risky or prejudicial way to handle the matters involved in the Marathon case.

I, as a former Interior attorney who in 1959 raised the legal effect of such decisions, cannot perceive how the BLM and the Interior Department as well as the Justice Department can properly disregard the existence and the legal effect of such decisions in the administration of the U.S. mining law, as amended, to pre-1920 unpatented mining claims.

Notwithstanding any representations, if any, set out in the patent application on the claims involved in the Marathon case to the effect that the decisions of the GLO applicable to the claims are without effect, I submit that the old decisions are a significant and a material matter that must be squarely raised, faced, pleaded and if necessary litigated in the proper handling of the Marathon case on the merits and the law, particularly in light of the law set out in Hickel v. Tosco, 400 U.S. 48 (1970); also see certain Interior decisions, particularly Union Oil Co. of California, 71 I.D. 169 (1964), Supp. 72 I.D. 313 (1965) and U.S. v. E.R.T.L., Inc., 74 IBLA 117 (June 30, 1983). 72 I.D. 313 (1965) probably is in error in light of more recent rationale set out on the adequacy of Service in various Supreme Court decisions. 74 IBLA 117 may have been withdrawn or set aside as the result of the "deal" allegedly made underlying the August 4, 1986 Settlement Agreement to get Judge Finesilver's 1985 decision in Tosco v. Hodel (611 Fed. Supp. 1130, U.S.D.C. Colorado, May 1, 1985, vacated. Please check this out carefully for I may be in error on the current status of 74 IBLA 117. 74 IBLA 117 may have reached an incorrect result, thus the reasoning and rationale in the decision warrants study and re-examination.

I suggest that you carefully read my comments largely relevant to old GLO decisions based on a charge of failure to do annual assessment work in S. Hrg. 101-248, particularly pages 265 through 268.

To the best of my information, knowledge and belief the vast number of GLO decisions which declared oil shale mining claims null and void on the charge of failure to do required assessment work have not been effectively set aside by action taken in Interior or as a result of any court decision or Court order unless some irresponsible and erroneous action was taken by a Court or Courts in vacating the decision in Tosco v. Hodel. Of course, very strange things happened in our Federal Government on matters relating to or underlying the August 4, 1986 Settlement Agreement whether in the Executive Branch, the Legislative Branch and in the Judicial Branch. These strange things have not been properly investigated as of this date. These strange things will forever stain and blot the integrity of the Federal Government operations on the multi-billion dollar, if not trillion dollar, Federal oil shale land matters.

It is my understanding that Paul Zogg, Esq., attorney for the Colorado Wildlife Federation, Denver, (phone 303-830-2557) apparently transmitted sometime ago certain materials and copies of relevant documents reproduced from documents in the old GLO contest files relating to the claims in the Marathon case to Barry Crowell, Esq., attorney, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. It is believed that as of the date of the oral argument held before Judge Finesilver, the Justice Department was not supplied copies of the documents that Mr. Zogg apparently sent or transmitted to Mr. Crowell.

I believe firmly that the Regional Solicitor and her staff attorneys on oil shale claim matters should be directed by you to forthwith explain to you in detail in writing why said Interior lawyers in Denver have not involved themselves in oil shale claim matters since on or about the middle of August 1986 or thereabouts.

I do not understand why the American people should be denied the services of the Office of the Regional Solicitor and its attorneys on multi-billion dollar oil shale claim matters. This kind of failure results in the mismanagement of the Interior Department. Perhaps you can explain this disgraceful and outrageous situation, if there is a valid explanation, to me and all the American people by way of an appropriate Interior press release by Secretary Lujan, Jr., and you as acting Solicitor of the Interior Department.

I should stress that two lawyers from the Office of the Solicitor, Denver, made some sort of an appearance at the Counsel table on April 4, 1990 in the Marathon case even though they have been kept from making their further contribution in the Interior Department on oil shale claim matters since sometime in 1986.

I recommend that you direct the Regional Solicitor, Denver, to order her oil shale mining claims staff attorneys to make a detailed and complete investigation to uncover what has been going on in the BLM, Denver, leading to the probable improper issuance of a so-called final certificate on the claims the matter of the Marathon case, especially if the claims had been in fact legally declared null and void years ago.

Is there any statutory authority for the BLM to issue a final certificate in two parts? What is the statutory authority, if any, for this?

Counsel for opposing sides making the arguments before Judge Finesilver on April 4, 1990 in the Marathon case never mentioned the applicability and effect of the provisions contained in Oil Placer Act of 1897 (29 Stat. 526) to pre-1920 oil shale unpatented mining claims. This I feel to be a tip of the "iceberg," which indicates that the Government and has so

far avoided, intentionally or otherwise, the implications of the requirements in the Oil Placer Act of 1897 and their ramifications to the claims involved in the Marathon case. For relevant discussion see pages 6 and 7 of the "Draft Letter" mentioned above, particularly under items 8 and 9. The trust and sweep of the content contained in the 1920 Instructions in 47 L.D. 548 can no longer be avoided in the handling of pre-1920 unpatented claims in our Federal Government. The Instructions applied the Oil Placer Act of 1897 to pre-1920 oil shale claims as set forth in the said Instructions. Also see comments relative to the implications of 1897 Act, at pages 259 and 260 of S. Hrg. 101-248, to pre-1920 unpatented oil shale claims. On page 259, H. Report No. 2655 (January 1897, 44th Congress, 2nd Session), is mentioned relative to the 1897 Act. The content of this Report should be carefully explored by your office in relation to pre-1920 unpatented oil shale claims and their validity, if any.

There have been other concerns expressed in this letter underlying or relative to the "process" used by the BLM to find pre-1920 unpatented oil shale claims valid without proper involvement of lawyers in the Office of the Regional Solicitor, Denver. How can the Secretary of the Interior carry out his trustee responsibility to the American people in compliance with law if knowledgeable attorneys in Denver in the Department are excluded from timely involvement on billion-dollar resource issues and matters by politicians occupying top level administrative and legal positions in the Department?

I recommend that you direct the Regional Solicitor, Denver, and the most experienced attorneys on oil shale claim matters in the Denver office to make a complete and thorough investigation of all matters pertinent to the validity or invalidity of the claims in the Marathon case and that the results of such an investigation be properly used in the handling of the Marathon case to proper conclusion.

MEANWHILE, I RECOMMEND THAT THE DEPARTMENT OF INTERIOR PROMPTLY REQUEST THE DEPARTMENT OF JUSTICE TO FORTHWITH SECURE AN APPROPRIATE CONTINUANCE OR DELAY IN THE MARATHON CASE FROM JUDGE FINESILVER SO THAT A MISCARRIAGE OF JUSTICE NOT BE CARRIED OUT IN THE RUSH TO JUDGMENT BASED ON THE RECORD APPARENTLY STIPULATED TO ON APRIL 4, 1990 WHICH DEFICIENT RECORD MAY FORESEEABLY LEAD TO A SUMMARY JUDGEMENT IN THE CASE AGAINST THE U.S. GOVERNMENT, IF QUICK CORRECTIVE ACTION IS NOT TAKEN BY INTERIOR AND JUSTICE DEPARTMENTS IN THE MARATHON CASE. APRIL 13, 1990 APPARENTLY is the deadline set by the Court in the Marathon case for certain purposes as directed by the Court and apparently agreed to by the counsel for both sides.

In view of the points made in this letter and in the enclosures and in the documents and/or briefs referred to in the enclosures or in the above S. Hrgs., particularly on the pages particularly highlighted above, I suggest strongly that you take charge of the matters covered in this letter with Secretary Lujan, Jr., to make sure that the Interior Department finally acts to put a stop to further mishandling by Interior staff of oil shale claim matters whether in the Interior Department, in the Courts, and/or before Congress.

I call to your attention another illuminating memorandum prepared in the Office of the Regional Solicitor, Denver, reflected on pages 247 through 254 of S. Hrg. 101-248.

I regret very much for having found myself, by virtue of my past involvement on oil shale claim matters as an attorney in the Office of the Regional Solicitor, Denver, to have to take action to put a heavy burden on you by way of this letter in the spirit of attempting to help the American people see to it that their rightful rights in the Federal oil shale resource not be frittered away by mismanagement, maladministration, if not by fraud, in our Federal

Government.

I hope this letter and the enclosures will help you see the nature of the serious breakdown in our Federal Government on oil shale claim matters needing the attention and action of Secretary Lujan, Jr. and you. This letter was prepared by me in the genuine effort on my part to be helpful to my old Department in time of need and to our Nation.

I must add that there is a 6 year statute of limitations which can bar the bringing of a suit to cancel a land or mineral patent issued in error or in mistake. Thus, your office should explore what steps should be taken in the Interior Department to cause the Attorney General to institute suits to cancel oil shale land patents issued in error or mistake, without the further passage of time, if it should be determined that this did occur.

In closing, I must state that an experienced investigative staffer on the Surveys and Investigations Unit of the House Appropriations Committee, who has looked into oil shale claim matters, has stated to me and also to another person that the HUD and Savings and Loan "scandals" constitute a pimple when compared to the Oil Shale Land Scandals in our Federal Government, or in words to this general effect.

The writer, Fred S. March, hereby reserves all ownership rights to this letter.

Faithfully,

Fred S. March

Fred S. March
(Phone 303-828-3976; call at 7:30 Colorado Time)

Enclosures are noted in this letter.

Temporarily at:
P.O. Box 285
Erie, Colorado 80516

Permanent:
P.O. Box 742
Ocean Shores, WA 98569

copy of this letter with enclosures to:
Gerald S. Fish, Esq., Attorney, Department of Justice
Land and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044-0663

P.O. Box 285
Erie, Colorado 80516
September 19, 1989

The Honorable Patrick J. Leahy, Chairman
Senate Committee on Agriculture, Nutrition and Forestry
Senate Office Building
Washington, D.C. 20510

and

The Honorable J. Bennett Johnston, Chairman
Senate Committee on Energy and Natural Resources
Senate Office Building
Washington, D.C. 20510

Dear Chairmen Leahy and Johnston:

Considering the way the Nation's Federal oil shale lands and minerals have been improperly administered, managed and disposed by the Federal Government, constitutes, in my opinion, a national scandal and a national disgrace. The conduct of the United States Senate in this scandal certainly constitutes a dark and damaging cloud upon the operations of the United States Senate on oil shale land and mineral matters.

Please refer to a copy of a letter dated August 25, 1987 addressed to Honorable J. Bennett Johnston, Chairman, Senate Committee on Energy and Natural Resources from the Sierra Club, Rocky Mountain Chapter, signed by Douglas Robotham. This letter, among other things, touched upon matters relating to the Melcher-Wirth Modified Amendment, reflected in Public Law 100-71 approved by the President on July 11, 1987, and on matters relating to the August 4, 1986 Settlement Agreement which led to the disposal of 82,000 acres of Federal oil shale lands subject to and pursuant to the terms of the Settlement Agreement, containing an estimated 42 billion barrels of recoverable shale oil.

In Public Law 100-71 there is a reference to the then pending application for patent C-39464, among nine other then pending patent applications, before the Bureau of Land Management, U.S. Department of Interior, Denver, Colorado. This patent application C-39464 could still be pending before the BLM in Denver and may involve certain claims that may have been located pursuant to the terms of a "Thurmond-Sibbald Agreement," dated March 30, 1918, which Agreement was evaluated in an Interior Department decision known as U.S. v. Rea L. Eaton, A-14971, June 8, 1931, petition for exercise of supervisory authority denied, March 22, 1932. I recommend that the Committees which you chair obtain copies of the above mentioned patent application C-39464, the copy of the Thurmond-Sibbald Agreement, and the above mentioned departmental decision from the Interior Department for use in the confirmation hearing relating to Mr. James Cason for the position of Assistant Secretary, Department of Agriculture, which hearing apparently has been scheduled for September 27, 1989 before Chairman Leahy's Committee. While I do not know for sure, it is my belief that the Interior Department has failed to evaluate the legality of the claims adequately, some of which may be involved in patent application C-39464.

Earlier this year, if I recall correctly, I supplied to Senior Counsel Patricia

Beneke of the Senate Energy and Natural Resources Committee, copies of four briefs, one dated June 14, 1962, one dated August 31, 1962, one dated September 21, 1962, and one dated February 28, 1963, put together by me while I was an attorney in the Office of the Regional Solicitor, U.S. Department of Interior, Denver, Colorado. I suggest strongly that Chairman Leahy obtain copies of the above mentioned briefs for use in the Mr. Cason Confirmation Hearing. I suggest that both of you carefully study pages 48-60 of my brief dated February 28, 1963, as on page 49 of said brief there is a reference to the French claims, some of which may be the matter of application C-39464. If I am correct as to what is involved in application C-39464, it seems to me that the Interior Department, as well as the United States Senate, both have not yet properly discharged the stewardship responsibility under law as to the claims coverd by application C-39464.

Although it appears that the BLM in Denver has issued final certificates to certain claims still pending before the Bureau of Land Management, whether the matter of Public Law 100-71 or not, your Committees should take steps to urge the Secretary of the Interior, the Honorable Manuel Lujan, Jr., to reevaluate the validity or invalidity of all the claims, now covered by pending applications for patent in the BLM in Colorado and possibly in Utah -- notwithstanding anything to the contrary contained in the instructions issued by Mr. Cason in early December 1988. As a matter of fact, the erroneous criteria, as I view them, issued by Mr. Cason for discovery and assessment work are still apparently being regarded as the appropriate criteria in the BLM in Denver.

Although I have never met or talked to Mr. Cason, to the best of my recollection, it is my view and recommendation to the Senate Agriculture, Nutrition and Forestry Committee that Mr. Cason not be confirmed for the position of Assistant Secretary of the Department of Agriculture, particularly in light of Mr. Cason's role and actions in the U.S. Department of the Interior on oil shale matters, including his execution of the August 4, 1986 Settlement Agreement for the Interior Department. I regret very much having to take this position, but in fairness to the American people on oil shale matters I feel it is my duty to speak out to attempt to protect the public interest in our Federal oil shale lands and minerals for the benefit of the American people in accordance with applicable law. I feel that Mr. Cason has failed the American people in his handling of oil shale matters in the U.S. Department of Interior and before applicable Congressional Committees.

To do justice to the American people on oil shale matters, the U.S. Congress should authorize a Select Committee to investigate, with the aid of the GAO, and then hold hearings on whether Federal oil shale lands on which mineral patents have been issued for $2.50 an acre have been in accordance with applicable requirements, purposes, and intent of the U.S. mining laws under which oil shale placer mining claims were allegedly located before February 25, 1920. Pending completion of such action, Congress should embargo the issuance of any further patents on oil shale mining claims.

Respectfully,

Fred S. March

Fred S. March

Permanent address:
P.O. Box 742
Ocean Shores, WA 98569

Temporary address:
P.O. Box 285
Erie, CO 80516

A copy of the Robotham letter is enclosed to each of the addressees. Copy to Senator Wirth, without enclosure.

January 19, 1990

Honorable Patrick J. Leahy
Chairman, Senate Agriculture Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy:

Enclosed are the following self-explanatory documents:

1. Copy of letter dated January 16, 1990 addressed to Chief, Forest Service, Honorable F. Dale Robertson, together with a clipping from the Oregonian dated December 12, 1989 and a copy of the letter dated December 27, 1989 from Chief Robertson to me.

2. Copy of my Statement dated October 20, 1989, consisting of 21 pages plus attachments thereto, submitted for the record of the hearing held before Chairman Rahall's House Subcommittee on Mining and Natural Resources, on October 7, 1989 at Eugene, Oregon, on certain claims covering 780 acres in the Oregon Dunes National Recreation Area.

I request that you instruct the Chief Counsel of your Committee and the Committee staff assistant in charge of Forest Service land and mineral matters, to make a thorough investigation of all matters, issues and questions raised in my letter of January 16, 1990 and in my Statement dated October 20, 1989, including all matters, issues and questions raised in the attachments to the Statement, so that you and other members of the Senate Agriculture Committee can make a decision (1) to order investigations and hearings by your Committee; and/or (2) to request the Comptroller General of the United States to order the GAO to make an audit and investigation on all matters, issues and questions raised in above said documents and attachments thereto.

It is clear that Mr. James Cason's handling of oil shale matters played a very substantial role in his not being confirmed by the U.S. Senate for the high post of Assistant Secretary for Agriculture as evidenced by certain statements made on the Senate floor on November 16, and 17, 1989, reflected in the Congressional Record, prior to the time the White House agreed to withdraw Mr. Cason's appointment as made evident in the proceedings of the U.S. Senate on the floor of the Senate on November 17, 1989.

Yet the full extent, nature and severity of the Federal oil shale land scandals in our Federal Government were not exposed on the Senate floor in the debates on Mr. Cason. This, in my view, casts a severe cloud on the operations of the U.S. Senate pertaining to resources involving billions of dollars, if not trillions of dollars, and in particular Mr. Cason's role and actions on these oil shale resources. See S. Hrg. 100-527, dated October 16, 1987; S. Hrg. 100-744, dated April 22, 1988 and S. Hrg. 101-248, dated July 31, 1989, all held on oil shale claims and bills before the Senate Subcommittee on Mineral Resources, Development and Production, particularly pages in the Appendixes of each of the above printed hearings for materials supplied for the record by Dr. Michael S. March or me and/or by both of us.

The handling of Federal oil shale land matters in our Federal Government despite the above Senate Hearings, in my view, constitutes a fraud on the American people if the actions in our Federal Government are closely examined and carefully analyzed by competent professional people having a thorough understanding of public-land-law administration matters relating to oil shale land and mineral matters and how the United States has been denuded of these resources

and how additional Federal oil shale resources may be given away by the Executive Branch and/or by Congress or both.

The Mr. Cason instructions of December 1988 on oil shale matters, as implemented in the BLM, continue so far as known to me, to remain the current standing instructions in the Offices of the BLM in Colorado and Utah. See S. Hrg. 101-248, pages 254 through 312. The Mr. Cason Instructions, unless nullified and withdrawn by Secretary of the Interior Lujan, Jr., as I see it, will likely jeopardize the United States Government in the handling of a case known as Marathon Oil, et al. vs. Secretary of the Interior, et al., brought by Marathon, et al., in October 1989, to compel the issuance of a mineral patent involving six unpatented mining claims. The Mr. Cason Instructions of December 1988 appear as an exhibit, with other exhibits, as documents purporting to support the complaint. In this connection please see the 2nd paragraph, page two of my letter dated September 19, 1989 addressed to you and Honorable J. Bennett Johnston, Chairman, Senate Energy and Natural Resources Committee, a copy of which letter appears as one of the enclosures to my October 20, 1989 Statement.

If the United States gets an adverse decision in the Marathon case or if the Interior Department settles with Marathon, the floodgates to patenting of oil shale lands will be opened up to the detriment of the people of the United States and the U.S. Government.

It appears that the Federal Oil Shale Land Scandals in our Federal Government are too big for the U.S. Congress to confront in a bold and meritorious manner. No one in Congress seems to have the fortitude to speak out in a manner as to protect the public interest under law in the Federal lands covered by pre-1920 unpatented oil shale claims or by other unpatented claims. Giveaways of Federal resources under guise of "administration" of the U.S. Mining Law, as amended, by the Agriculture and Interior Departments seem to be condoned by Congress and by top officials in our Government, even though these giveaways may constitute a fraud on the people of the United States and on our National Government.

Please respond to this letter and let me know what you and your Committee Colleagues do on the matters covered in this letter, in the enclosed documents, and in the attachments thereto.

Sincerely,

Fred S. March

Fred S. March

P.S. Please send me two sets of the printed Hearing relating to the confirmation hearing on Mr. Cason before your Committee.

Temporarily at:
P.O. Box 285
Erie, Colorado 80516

Permanent at:
P.O. Box 742
Ocean Shores, WA 98569

January 20, 1990

Honorable J. Bennett Johnston
Chairman, Senate Energy and Natural Resources Committee
and
Honorable Jeff Bingaman
Chairman, Senate Subcommittee on Mineral Resources, Development and Production

United States Senate
Senate Office Building
Washington, D.C. 20510

Dear Senators Johnston and Bingaman:

Above Committees are "derelict" on Oil Shale Claim Matters

This letter is to bring to your attention directly the fact that, in my view, the American people are not getting your appropriate attention, action, and protection on mineral resources which have been given away or about to be given away, even with the possible blessings of members of the Senate on the above two Senate Committees.

To put it mildly, the Senate Subcommittee hearings on oil shale claims and bills, see S. Hrg. 100-527, dated October 16, 1987; S. Hrg. 100-744, dated April 22, 1988 and S. Hrg. 101-248, were essentially conducted, in my view, for the purpose of creating an environment to condone past oil shale land giveaways and to justify legislation, if enacted into law, which would validate pre-1920 unpatented claims for purposes of the new legislation in a manner as to circumvent present existing law and applicable Interior and court decisions.

Staff work prior to each of the above hearings held appears to have been deficient or else the record made in the above hearings would not be filled with errors, distortions, misrepresentations, propaganda and even with distortions of what certain decisions stand for and how the decisions should be applied to unpatented oil shale claims. There is no excuse for the Subcommittee hearings to permit the Interior Department to misapply, misconstrue and misinterpret either Interior or court decisions, or for anyone else to do so in such hearings.

In short, the hearings were not conducted to develop the truth relating to pre-1920 unpatented mining claims and their defects and the fact that many were likely declared null and void by the General Land Office years ago for the record. Apparently, no questions of any significance were asked by any staff counsel in these hearings to bring out the truth or to refute incorrect statements in the record. And there remains an unanswered question as to whether the Chief Counsel and other staff counsel ever attended or observed the conduct of the hearings.

The bulk of the Senators on these above Committees seemed to have even boycotted the hearings, certainly for most of the time when the hearings were held or conducted. This is no way for you and other Senators on your Committees to carry out the Nation's business on multi-billion dollar Federal oil shale resources, if not trillion dollar Federal oil shale lands, that are apparently held hostage to the pending S.30 and H.R. 2392, and more threateningly so, to the Interior Department's draft bill reflected in S. Hrg. 101-248, at pages 200-206.

The Department of Interior version of the bill would forthrightly dismantle the present law applicable to discovery and maintenance of claims. The bill will make it possible for the Interior Secretary to essentially give away any claim, regardless of whether it had been long ago

abandoned, declared null and void, located for speculative purposes, located using dummy locators, located on lands not "chiefly valuable" for oil shale at the date and time of location, or had been eliminated for adverse possession by the United States for purposes of the Mineral Leasing Act and/or subject to other pertinent defects upon which the claim could be contested under current law. The bill, in my view, was actually drafted and crafted to circumvent present law without so stating. It would for example override Hickel v. TOSCO, a landmark decision favorable to the United States by the U.S. Supreme Court and it would even misapply, in effect, the Freeman v. Summers decision, 52 L.D. 201, 1927 and the DOI Instructions in 47 L.D. 548 (1920). In essence the bill would provide a statutory bogus discovery test not authorized by the erroneous Freeman v. Summers decision or by the erroneous decision by the Supreme Court in Andrus v. Shell. The footnotes containing pertinent law of discovery for timeliness of discovery in Andrus v. Shell Oil would essentially be nullified.

While I am critical of the Department of Interior version of bill, it should be also noted at S.30 and H.R. 2392, known respectively as the Wirth and Campbell bills also would undermine present existing law applicable to pre-1920 unpatented oil shale claims in a manner as to effectively validate claims of doubtful validity for purposes of these said two bills.

When the purposes of bills introduced in Congress are not clearly made known specifically as to the effects of such bills if enacted into law, and the American people are kept in dark as to what is about to happen to their resources in the Federal oil shale lands, a good question is presented as to whether legislation of this sort is ethical, moral and constitutionally valid.

Senators presiding at the above hearings seem to have blindly accepted whatever came from the Department of Interior witnesses or from those purportingly speaking for themselves and/or other special interests. So deficient records were created that can, in the near future, operate to mislead the bulk of the Senate membership on oil shale matters with the failure to develop for the record the truth as to the invalidity of pre-1920 claims, certainly as to the great majority of them, if not all of them, with the truth kept from the record either by design and/or incompetence.

Key attorneys from the Interior Department's Regional Solicitor's Office, Denver, Colorado, as well as key attorneys from the Justice Department, Washington, D.C. having expertise on pre-1920 oil shale claims, both patented and unpatented, and the law, have been avoided like a plague by your Committees and certainly said knowledgeable lawyers have never been invited or summoned by your committees to testify on oil shale claim matters and the law and related matters, including the August 4, 1986 Settlement Agreement and the resulting disposals of 82,000 acres of Federal oil shale lands, subject to the terms of the Agreement, containing an estimated 42 billion barrels of recoverable shale oil.

Your Committees have failed to develop truthful estimates for the record of recoverable shale oil and other associated minerals in the lands to be affected by the above bills, if enacted into law.

Your Committees have failed to put into the record of S. Hrg. 101-248 my briefs mentioned on page 255 of said S. Hrg. Also your Committees, so far, have failed to insert into the record of any hearing the Regional Solicitor Office briefs referred to in S. Hrg. 100-744, pages 270, 272 and

the draft (appeal) brief, approximately 185 pages long, in regard to Tosco v. Hodel, referred to at page 278 of S. Hrg. 100-744.

Without going on endlessly to show all the defects in your Committee operations on oil shale matters, it is clear to me, that as Chairmen, both of you must take action to put oil shale matters as a No. 1 priority matter for staff action and committee membership attention and action. Possible tilting of the Committees to induce further giveaways of oil shale lands by the Executive Branch and/or by Congress, with the President's approval, must be halted once and for all time. Enough is enough insofar as giveaways are concerned by our Government.

In essence, your Committee operations seem to be conducted in an unconstitutional manner more so than in a constitutional manner in carrying out your Committee stewardship responsibilities in regard to Federal oil shale lands and resources.

Mineral Matters Requiring Investigations

Enclosed are the following self-explanatory documents:

1. Copy of letter dated January 16, 1990 addressed to Chief, Forest Service, Honorable F. Dale Robertson, together with a clipping from the Oregonian dated December 12, 1989 and a copy of the letter dated December 27, 1989 from Chief Robertson to me.

2. Copy of my Statement dated October 20, 1989, consisting of 21 pages plus attachments thereto, submitted for the record of the hearing held before Chairman Rahall's House Subcommittee on Mining and Natural Resources, on October 7, 1989 at Eugene, Oregon, on certain claims covering 780 acres in the Oregon Dunes National Recreation Area.

I request that you instruct the Counsel of your Committees and the Committee staff assistants in charge of land and mineral matters, to make a thorough investigation of all matters, issues and questions raised in my letter of January 16, 1990 and in my Statement dated October 20, 1989, including all matters, issues and questions raised in the attachments to the Statement, so that you and other members of the your Committees can make a decision (1) to order investigations and hearings by your Committees; and/or (2) to request the Comptroller General of the United States to order the GAO to make an audit and investigation on all matters, issues and questions raised in above said documents and attachments thereto. Answers to the questions mentioned or referred to above need to be obtained by your Committees and/or the GAO.

My brother, Dr. Michael S. March, made significant recommendations to the Senate Subcommittee on Mineral Resources and Production in his letter addressed to then Honorable John Melcher Chairman, dated October 14, 1987, setting forth a course of action for the Senate Subcommittee to undertake in connection with oil shale matters. These recommendations are set out on pages 191-192 of S. Hrg. 100-527. Additionally, my brother also made important recommendations to the Congress in his Statement supplied to the Subcommittee headed by Chairman Jeff Bingaman, reflected in S. Hrg. 101-248, at pages 242-243.

I urge you to carefully evaluate the materials submitted by my brother, reflected in the

above three Senate Hearings and the materials that I supplied to the Subcommittee reflected in S. Hrg. 100-744 and S. Hrg. 101-248, as I feel that these two Committees have failed to properly grasp the significance of the information supplied by us to the Subcommittee.

Former Deputy Assistant Secretary Cason's Role on Oil Shale

It is clear that Mr. James Cason's handling of oil shale matters played a very substantial role in his not being confirmed by the U.S. Senate for the high post of Assistant Secretary for Agriculture as evidenced by certain statements made on the Senate floor on November 16, and 17, 1989, reflected in the Congressional Record, prior to the time the White House agreed to withdraw Mr. Cason's appointment as made evident in the proceedings of the U.S. Senate on the floor of the Senate on November 17, 1989.

Yet the full extent, nature and severity of the Federal oil shale land scandals in our Federal Government were not exposed on the Senate floor in the debates on Mr. Cason. This, in my view, casts a severe cloud on the operations of the U.S. Senate pertaining to resources involving billions of dollars, if not trillions of dollars, and in particular Mr. Cason's role and actions on these oil shale resources. See S. Hrg. 100-527, dated October 16, 1987; S. Hrg. 100-744, dated April 22, 1988 and S. Hrg. 101-248, dated July 31, 1989, all held on oil shale claims and bills before the Senate Subcommittee on Mineral Resources, Development and Production, particularly pages in the Appendixes of each of the above printed hearings for materials supplied for the record by Dr. Michael S. March or me and/or by both of us.

The handling of Federal oil shale land matters in our Federal Government despite the above Senate Hearings, in my view, constitutes a fraud on the American people if the actions in our Federal Government are closely examined and carefully analyzed by competent professional people having a thorough understanding of public-land-law administration matters relating to oil shale land and mineral matters and how the United States has been denuded of these resources and how additional Federal oil shale resources may be given away by the Executive Branch and/or by Congress or both.

The Mr. Cason instructions of December 1988 on oil shale matters, as implemented in the BLM, continue so far as known to me, to remain the current standing instructions in the Offices of the BLM in Colorado and Utah. See S. Hrg. 101-248, pages 254 through 312. The Mr. Cason Instructions, unless nullified and withdrawn by Secretary of the Interior Lujan, Jr., as I see it, will likely jeopardize the United States Government in the handling of a case known as Marathon Oil, et al. vs. Secretary of the Interior, et al., brought by Marathon, et al., in October 1989, to compel the issuance of a mineral patent involving six unpatented mining claims. The Mr. Cason Instructions of December 1988 appear as an exhibit, with other exhibits, as documents purporting to support the complaint. In this connection please see the 2nd paragraph, page two of my letter dated September 19, 1989 addressed to you and Honorable J. Bennett Johnston, Chairman, Senate Energy and Natural Resources Committee, a copy of which letter appears as one of the enclosures to my October 20, 1989 Statement. Your Committees must act to persuade Secretary of the Interior Lujan, Jr., to nullify and to withdraw the Cason Instructions without delay.

If the United States gets an adverse decision in the Marathon case or if the Interior

Department settles with Marathon, the floodgates to patenting of oil shale lands will be opened up to the detriment of the people of the United States and the U.S. Government. It is believed by me that Interior may be in a process of negotiating a settlement agreement with Marathon, possibly to enable Marathon and others to get the oil shale and associated minerals in the six claims, the matter of the suit. If such a settlement is reached, it is clear to me that the suit will then be dismissed. Your Committees must certainly know that the Mr. Cason Instructions set out in a letter to Chairman Johnston, see S. Hrg. 101-248, at pages 272-273, are erroneous. I recommend that your Committees should ask the Attorney General of the United States to carefully review any proposed settlement on the Marathon case for propriety and the need, if any, for such a proposed settlement, if such a settlement negotiation is in process presently. Certainly, since Mr. Cason was not confirmed by the Senate for the position of Assistant Secretary of Agriculture, there remains a question why his Instructions on oil shale, if erroneous in fact, should now determine the U.S. Government's position on oil shale claims and determine the course of presently pending litigation in the Marathon case.

Oil Shale Land Scandals Too Big For Congress to Handle?

Is it possible that the Federal Oil Shale Land Scandals in our Federal Government are too big for the U.S. Congress to confront in a bold and meritorious manner? No one in Congress seems to have the fortitude to speak out in a manner as to protect the public interest under law in the Federal lands covered by pre-1920 unpatented oil shale claims or by other unpatented claims. Giveaways of Federal resources under guise of "administration" of the U.S. Mining Law, as amended, by the Agriculture and Interior Departments seem to be condoned by Congress and by top officials in our Government, even though these giveaways may constitute a fraud on the people of the United States and on our National Government.

Embargo To Stop Patenting of Oil Shale Claims

Since neither S.30 nor H.R. 2392 nor the Interior version of the bill, have any likelihood of passage in the 101st Congress, 2nd Sess., I respectfully recommend that your Committees take steps to cause the passage of a bill in Congress to forthwith embargo any patenting of claims, whether in present pending applications for patent with the BLM or not, pending initiation and carrying out needed oil shale land investigations and hearings by Congress. I believe the American people are entitled to know the truth on oil shale past giveaways, and the breakdown in the administration of the U.S. Mining Law, as amended, leading to the giveaways; and the full nature and extent of the oil shale land scandals, including the disclosure by Congress of the need for, if any, for any legislation along the lines S.30, H.R. 2392 or the Interior version of the bill, to be enacted into law. American people are entitled to know just what giveaways will occur if each of these bills are enacted into law.

Draft Letter of September 5, 1989 Proposed to be Sent to Mr. Hughes

In the July 31, 1989 oil shale hearing (S. Hrg. 101-248) Mr. Ron Cattany of the Colorado Department of Natural Resources made some comments that resulted in a letter from Mr. Jim M. Hughes, Deputy Assistant Secretary - Land and Minerals Management, to the Governor of Colorado. The enclosed draft of a letter was prepared for Mr. Cattany's possible use in

responding to Mr. Hughes. Mr. Cattany's secretary told me over the phone about two weeks ago that copies of this proposed draft letter were released by Mr. Cattany to certain House-Senate Conferees and possibly other members of Congress or their staff, and Mr. Hughes.

I mentioned this proposed draft letter to Mr. Mike Harvey and I promised to send a copy to him but it turns out that I delayed and at this time the draft letter is provided to you for use by all those concerned with oil shale matters, particularly of course, the members of your Committees and the pertinent staff of these Committees.

Until I get to talk to Mr. Cattany to find out what really happened with this draft letter, I respectfully ask that this letter be kept confidential in light of the sensitivity of the matters covered or set out in the draft letter. I urge each of you to carefully study the entire content of this draft letter.

Request for Response

Please respond to this letter and let me know what you and your Committee Colleagues do on the matters covered in this letter, in the enclosed documents, and in the attachments thereto.

Respectfully,

Fred S. March

Fred S. March

P.S. Please send me the so-called Johnston-Leahy packet, allegedly sent by said two Senators to other Senators in the Senate body that played a part in defeating Mr. Cason for the Assistant Secretary of Agriculture position.

Temporarily at:
P.O. Box 285
Erie, Colorado 80516

Permanent at:
P.O. Box 742
Ocean Shores, WA 98569

(Draft) September 5, 1989

Mr. Jim M. Hughes
Deputy Assistant Secretary - Land and Minerals Management
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 80203-1792

Dear Deputy Assistant Secretary Hughes:

Governor Roy H. Romer of the State of Colorado has asked that I respond to your letter dated August 2, 1989.

At the outset, please permit me to comment that I am delighted that in the August 2, 1989 letter you have indicated Secretary Lujan's commitment of being a proper steward for public lands and mineral resources. In this context, I desire to indicate that we in the Government for the State of Colorado are highly in accord with Secretary Lujan's commitment in the above regard, especially with regard to pre-1920 oil shale claims and the disposals of Federal oil shale land under the pretext of pre-1920 unpatented mining claims, and the controversies that have arisen from the handling of these matters in the Interior and Justice Departments. We in the State Government of Colorado desire to fully cooperate and assist Secretary Lujan on these matters.

With regard to the allegations and/or charges set forth in your letter of August 2, 1989 allegedly made by me in the July 31, 1989 oil shale hearing on S.30 and H.R. 2392 before the Senate Subcommittee on Mineral Resources, Development and Production of the Senate Energy and Natural Resources Committee, please accept my following explanation:

1. In 1986, on or about or even prior to the time the August 4, 1986 Agreement was executed leading to the disposal of 82,000 acres of Federal oil shale land pursuant to the terms of the Agreement, I had obtained certain Administrative Law Judge decisions, certain Interior Board of Land Appeals decisions, all relating to the bulk of the claims, except for the claims thentofore involved in consolidated contests known as U.S. v. Theo Ertl, et al., the matter of the August 4, 1986 Settlement Agreement purporting to settle the case or cases arising from Tosco v. Hodel, 611 Fed. Supp. 1130 (U.S.D.C. Colo., May 1, 1985).

In addition, I had before me copies of the two briefs prepared in March 1982 by attorneys in the Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, Colorado 80225 relative to the case known as U.S. v. Weber Oil Company, et al., contestees, in Colorado BLM Contests Nos. 193, 260, 685, 686, 687 and 688. These two briefs only applied to 200 plus claims in said contests, and thus did not apply to all the 524 claims, the matter of the August 4, 1986 Settlement Agreement.

I recommend that you and your most knowledgeable attorneys on shale claim matters at the Washington, D.C. Office of the Solicitor, U.S. Department of the Interior, carefully review the content of the two said briefs in the context of my statements and testimony before the Senate Subcommittee of Mineral Resources, Development and Production on October 16, 1987 (S. Hrg. 100-527), on April 22, 1988 (S. Hrg. 744), and on July 31, 1989.

In the Conclusion of the Reply Brief of Contestant, dated March 26, 1982 in the above contests at page 104, in part, it is stated:

> The law mandates a finding that each of the two hundred and two claims is invalid for numerous reasons...

2. Notwithstanding anything to the contrary given by me heretofore in regard to oil shale claim matters to the Senate Subcommittee of Mineral Resources, Development and Production and to the House Subcommittee on Mining and Natural Resources and the House Interior and Insular Affairs Committee it is now my position that the officials of the Interior and Justice Departments should not have executed the August 4, 1986 Settlement Agreement to permit the disposal of 82,000 acres of Federal oil shale lands as noted above.

I feel it was a grave and irresponsible error for the U.S. Government not to properly appeal Tosco v. Hodel.

The Tosco v. Hodel decision of 1985 was and is in error on fact and in law in light of the content of a draft appeal brief prepared by attorneys in the Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, which brief was provided to the Solicitor's Office, Washington, D.C., prior to the execution of the Settlement Agreement on August 4, 1986. I recommend that you and your legal experts carefully consider the content of this 185 page draft brief which recommended appeal of Tosco v. Hodel.

Also, it appears the U.S. District Court in Denver, Colorado, may have exceeded its authority and jurisdiction in reversing certain findings of fact made in certain Interior Board of Land Appeals decisions applicable to the 524 claims, the matter of the August 4, 1986 Settlement Agreement. This point should be carefully investigated and considered in your investigation being made for the Secretary of the Interior. See Foster v. Seaton, 271 F.2d 836 at 839 (1959).

3. With reference to Mr. Cason's Statement of February 28, 1989 given before Chairman Rahall's House Subcommittee on Mining and Natural Resources in regard to the collection of information by Interior staff for the Secretary "that may be used in the future for patenting oil shale claims," I respectfully recommend that all materials, including memoranda and briefs, particularly situated in the Office of the Regional Solicitor or in its archives, U.S. Department of the Interior, Denver, Colorado, applicable to oil shale mining claim matters and pre-1920 oil shale mining claims, including briefs and memoranda on oil shale mining contests and in oil shale cases, prepared by present and former attorneys in that office, since July 1, 1954 be obtained, studied and analyzed so that

the Secretary and his oil shale staffers can get a better understanding of the history of each of the pre-1920 mining claims patented as a result of the August 4, 1986 Agreement as well as on claims which are also subject to present pending patent applications, filed with the BLM in Colorado and Utah.

It would appear necessary for the Department to obtain and study copies of any opinions, memoranda and briefs prepared by other attorneys whether in the Field or in Washington, D.C. since July 1, 1954, if not before, in regard to pre-1920 oil shale claims and matters associated with such claims.

I am very concerned with the fact that it appears out here in Colorado that the Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, including its attorneys, has been barred or circumvented ever since shortly after the Settlement Agreement of August 4, 1986 was executed, from rendering legal assistance to the State Director, BLM, Denver, and his staff, on oil shale matters. This failure of the Department to utilize most knowledgeable attorneys in the Denver Office on multi-billion, if not trillion dollar, oil shale matters, in itself, constitutes a national scandal in public-land-law administration in the Department of the Interior.

In my judgment, longstanding experienced career attorneys in the Denver Office or elsewhere in the Interior Department, should not be excluded from handling oil shale claim matters for in doing so, I fear that the public interest in oil shale claim matters will not be protected in accordance with applicable law.

Frankly, our Federal Government policy makers in the Interior Department should have already noted that the "Brat Pack" in HUD operated in a manner as to become involved in a $2 billion scandal, if not in executing the HUD matters as to result in an indirect theft of Government monies.

4. Operations of this kind may have occurred in the handling of oil shale claim matters in the U.S. Department of the Interior. Accordingly, I recommend that all matters relating to the August 4, 1986 Agreement and underlying the Agreement be carefully investigated to determine whether those in Interior and Justice Departments at the Washington, D.C. level who made or assisted in making a decision to enter into the August 4, 1986 Agreement properly protected the best interests of the United States by making a decision not to properly appeal Tosco v. Hodel, and in lieu of a proper appeal, entering into the August 4, 1986 Settlement Agreement, particularly in light of content of the briefs in U.S. v. Weber Oil Company prepared in March 1982 by then Interior lawyers mentioned above and in light of the content of the draft appeal brief prepared in 1985 by attorneys then in the Regional Solicitor Office, Denver, Colorado.

The investigators, whether in the Interior and Justice Departments, or in Congressional Committees, with the assistance of GAO, need to review the entire record of the Interior proceedings, including transcripts and exhibits, in the oil shale contests involving the 524 claims, the matter of the August 4, 1986 Agreement, and the record made in Interior Board of Land Appeals proceedings

applicable to said claims, including all legal briefs filed in such contests, and with the Interior of Board of Land Appeals in the Interior Department.

The legal briefs filed (or neglected to be filed) by the Justice Department in the cases involving some or all of the 524 claims should be carefully reviewed to determine whether the Justice Department properly fought to have the Interior Board of Appeal decisions applicable to the 524 claims sustained on judicial review. This may enable the investigators to determine whether the contests were properly prepared prior to hearing and whether the attorneys handling the contests fought to win and whether the Justice Department attorneys handling the cases on judicial review knew what they were supposed to do and whether they did a credible job of representing the United States in the U.S. District Court in Colorado in cases relating to the 524 claims.

There exists a question that needs to be answered after a complete investigation: Were the contests involving the 524 claims properly prepared on all applicable charges and whether the United States was adequately represented in such contest proceedings and appeals; and whether the Justice Department properly represented the United States in the cases on judicial review of final Interior Department decisions on the 524 claims?

In late 1961, and in early 1962, the Regional Solicitor, U.S.D.I., Denver, took steps to, in effect, sabotage the earlier plan for preparation of Contest 260, BLM (Colo.) as had been formulated and outlined in a series of memoranda prepared in the Regional Solicitor's Office, addressed to the State Director, BLM, Colorado, prior to the time this Regional Solicitor was installed. Did similar curtailment of preparation occur on other contests? Why were all available charges not used in Contests 359 and 360?

5. We question whether the Interior and Justice Departments, by entering into the August 4, 1986 Settlement Agreement, properly discharged the Secretary's trust responsibilities to the American people in accordance with the proper application of law pertaining to 82,000 acres of Federal oil shale lands containing an estimated 42 billion barrels of recoverable shale oil. In this connection we wonder whether officials in the Interior and Justice Departments made a detailed factual and legal analysis to determine whether each of the 524 claims, the matter of the August 4, 1986 Agreement, as a fact, met all the applicable requirements of law for issuance of a patent or patents. If not, why not?

6. Do the U.S. mining laws, as supplemented or amended by the Oil Placer Act of 1897 (29 Stat. 526) and as further supplemented or amended by the Mineral Leasing Act of February 25, 1920, as amended, authorize a horizontal splitting of estates in land in the form effected under the terms of the August 4, 1986 Agreement in the 82,000 acres divested from Federal ownership? Also, we question whether there in fact existed any statutory authority to permit the United States to enter into the August 4, 1986 Agreement. Did the Justice Department render a legal opinion on this issue prior to Interior and Justice Department officials executing the Agreement? If not, why not?

We question whether the statutory authorities which existed for the Secretary of the Interior and the Attorney General in the Justice Department at the time of the August 4, 1986 Settlement Agreement, authorized officials in said Departments to enter into the August 4, 1986 Agreement, which, in effect, when carried out had the effect of accomplishing a plan of action, as set forth in the Agreement, which in my opinion, was not authorized under law.

Additionally, did anyone in said Departments, undertake to determine whether the officials in said Departments who executed the August 4, 1986 Agreement, in fact, had been delegated authority in compliance with applicable law sufficient for them to bind the United States by executing the August 4, 1986 Agreement. If not, why not?

7. Prior to the making of the decision for the Interior and Justice Departments to enter into the August 4, 1986 Agreement, did anyone in said Departments request the attorneys most familiar with oil shale claim matters to supply a detailed and definitive analysis of the history of the actions, and the legal effects thereof, taken in our Federal Government on oil shale claims and on oil shale matters from February 25, 1920, if not before, to the date of August 4, 1986, on which the Agreement was executed? If not, why not?

Did anyone in our Government, prior to the date of August 4, 1986, request the Regional Solicitor's Office, Denver, Colorado, to supply all documents, including memoranda and briefs, prepared in said office, to the Secretary of the Interior, shedding light on the facts and the law relating to or pertaining to each of the 524 mining claims, the matter of the August 4, 1986 Agreement? If not, why not?

How about documents, memoranda, and briefs then in the files of the Solicitor's Office, or its archives, in Washington, D.C., relating to the 524 claims, in existence prior to the execution of the August 4, 1986 Agreement, going back to February 25, 1920? Who in Interior relative to the 524 claims searched out what was in the files in the Interior Department and its bureaus, including the Solicitor's office, before the August 4, 1986 Agreement was executed? If not, why not?

How about documents, memoranda, investigation reports and briefs, if any, then in the old files of the General Land Offices or its archives, or in the files of the Bureau of Land Management, in Washington and in the Field, or its archives, relating to the 524 claims, in existence, prior to the execution of the August 4, 1986 Agreement, going back to February 25, 1920? Who in Interior searched out the above documents and reviewed them before the August 4, 1986 Agreement was executed? If not, why not? Was a competent review made or was the review merely made to justify the proposed Agreement then contemplated?

Did anyone with competency, in the Interior and Justice Departments carefully review all the court records, exhibits and briefs and the record of the Administrative Proceedings in Interior Department underlying and leading to the decisions of the U.S. Supreme Court in cases known as

Hickel v. Tosco, 400 U.S. 48 (1970) and Andrus v. Shell Oil Co., 446 U.S. 657 (1980) prior to the time the decision was made in our Federal Government to enter into the August 4, 1986 Agreement? If not, why not?

8. Notwithstanding anything to the contrary stated by Mr. Cason before Chairman Rahall's House Subcommittee hearing held on February 28, 1989, in regard to the Andrus decision, the majority of the Supreme Court in part, stated as follows in Andrus at page 673:

> ...We conclude that the original position of the Department of the Interior, enunciated in the 1920 Instructions and in Freeman v. Summers, is the correct view of the Mineral Leasing Act as it applies to the patentability of those claims.

The 1920 Instructions are contained in 47 L.D. 548. The Courts reference to "those claims" refer to pre-1920 then unpatented oil shale mining claims, the matter of Andrus.

Freeman v. Summers decision appears in 52 L.D. 201 (1927).

Mr. Cason's Statement of February 28, 1989 before Chairman Rahall, for some reason totally fails to reveal certain requirements of the mining law noted in the footnotes to the majority opinion in Andrus. The Court in footnote 1, as continued on page 669, stated, in part, as follows:

> ...There is no deadline within which a locator must file for patent, though to satisfy the discovery requirement the claimant must show the existence of 'valuable mineral deposits' both at the time of location and at the time of determination. Barrows v. Hickel, 447 F.2d 80, 82 (CA9 1971).

The time of determination refers to the time of administrative hearing.

The holding by the U.S. Supreme Court in Andrus, as to the claims the subject matter of Andrus, did nothing more than deprive the Department of the Interior with respect to pre-1920 then unpatented oil shale mining claims in Andrus the use of the "marketability test" as a complement and refinement to the "prudent man test." Castle v. Womble, 19 L.D. 455, 457 (1894) states the prudent man test. U.S. v. Coleman, 390 U.S. 599, 600 (1968), states the "marketability test." These two above tests are succinctly summarized respectively in footnotes 2 and 3 in Barrows v. Hickel, 447 F.2d 80 at page 82 (1971).

The majority opinion in Andrus fails to reveal that the Oil Placer Act of February 11, 1897 (29 Stat. 526) authorized entry, under the Placer Act provisions of the mining law, to public land "chiefly valuable therefor" for petroleum or other mineral oils. This Act is the basic authority for oil shale placer mining claims notwithstanding anything to the contrary by the majority of the Court in Andrus. In my opinion the Mineral Leasing Act of February 25, 1920 does not contain any substantive authority for the location of pre-1920 oil shale mining claims. (Note: The Mineral Leasing Act of February 25,

1920 operated to terminate authority for the further location of oil and gas placers and oil shale claims, among certain other leasing act substances.)

9. The standards, for discovery applicable to oil shale claims, set out in the DOI Instructions of May 10, 1920, 47 L.D. 548 and in Freeman v. Summers, 52 L.D. 201 (1927) appear to be at total odds or in total conflict. Thus, the majority of the Court in Andrus, failed to perceive that the standards in 47 L.D. 548 for discovery of a valuable mineral deposit for an oil shale mining claim, were the same as for oil and gas placer mining claims, are the correct standards and the standard in Freeman v. Summers is flawed from the standpoint of erroneous geologic facts found as to the composition of the Green River Oil Shale Formation and erroneous law enunciated for discovery for an oil shale placer mining claim as set forth in the decision. (Note: For a more definitive discussion of errors of fact and law in Freeman v. Summers, please carefully review the entire content of a 5 volume brief filed by the Regional Solicitor's Office, U.S. Department of the Interior, Denver, Colorado in 1968 in BLM Colorado Contests 359 and 360, involving certain then unpatented oil shale claims, some of which became the matter of Andrus v. Shell Oil Co., 446 U.S. 657 (1980).

In Best v. Humboldt Mining Co., 371 U.S. 334 at 336 (1963) the U.S. Supreme Court stated, in part, as follows:

> ...A locator who does not carry his claim to patent does not lose his claim though he takes the risk that his claim will no longer support the issuance of a patent. United States v. Houston, 66 I.D. 161, 165. It must be shown before a patent issues that at the time of application for patent the claim is valuable for minerals, worked out claims not qualifying. United States v. Logomarcini, 60 I.D. 371, 373.

If an initial valid discovery had been perfected timely, and if for any reason the discovery was lost prior to the time an applicant applied for a patent on a claim (or the claim became the matter of a contest hearing) the claim would be deemed to be lacking in a valid discovery, therefore such a claim should be declared null and void in an appropriate contest proceeding.

10. Mr. Cason in his February 28, 1989 statement before Chairman Rahall's House Subcommittee on Mining and Natural Resources apparently failed to state with regard to an unpatented oil shale claim, among other things, that a "discovery" must have been made timely, i.e., prior to the enactment of the Mineral Leasing Act of February 25, 1920, or as a result of diligent prosecution of discovery work on that date on the claim and thereafter continued diligently until a valid discovery was perfected. See U.S. v. Strauss, 59 I.D. 129 at pages 145-147 (1945). (Note: In regard to the issues relating to the requirement of annual assessment work and its application as discused at pages 145-147 of Strauss, in relation to prior claims for substances that are now under the Mineral Leasing Act in the context of the decision in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), it is noted here a great many of the points stated on said pages in Strauss would need to be completely re-

visited and re-thought in light of the content of the U.S. Supreme Court decision in Hickel v. Tosco, 400 U.S. 48 (1970).

The 5 volume brief, dated May 20, 1968, in Contests 359 and 360, prepared by attorneys then in the Regional Solicitor's Office; the lengthy 1982 legal briefs in U.S. v. Weber Oil Company, et al., consolidated Contests 193, 260, and several others, and the lengthy draft brief prepared for the purpose of appealing Tosco v. Hodel, prepared by attorneys then in the Regional Solicitor's Office, U.S. D.I., Denver, Colorado, reveal a thorough and excellent discussion of all aspects of the law of discovery currently applicable to pre-1920 unpatented oil shale mining claims. [Note: The discussion of the marketability test as set forth in the 5 volume brief in Contest 359 and 360 must be excluded from the present law of "discovery" applicable to pre-1920 unpatented mining claims. These above briefs also set forth, to a considerable extent, a comprehensive and or illuminating history on pre-1920 oil shale claims.]

These briefs, mentioned in the above paragraph, reveal exactly what the Freeman v. Summers decision stands for. Mr. Cason in his February 28, 1989 Statement before Chairman Rahall, has interpreted Freeman v. Summers to mean that an exposure of only lean beds of oil shale on the surface of a claim plus geological inference that richer deposits were present at depth equalled a valid discovery to satisfy the U.S. Mining Laws even though oil shale only had a prospective value. Mr. Cason appears to be in error as geological inference was not the basis of Freeman v. Summers, 52 L.D. 201 (1927). The factual basis for the decision was the erroneous findings of fact as to the composition of the Green River Formation set forth in Freeman v. Summers. The above mentioned legal briefs in Contests 359 and 360 and in U.S. v. Weber Oil Co., et al., prepared by attorneys then in the Regional Solicitor's Office, U.S. D.I., Denver, Colorado, expose excellently and adequately the erroneous basis of fact and law in Freeman v. Summers.

11. It should be noted here that Tosco v. Hodel, 611 Fed. Supp. 1130, as part of the August 4, 1986 Agreement, subsequent to the Settlement being carried out by the Interior Department, was vacated. Accordingly, the Tosco v. Hodel decision does not operate as any precedent upon which to adjudicate pre-1920 unpatented mining claims to patent. To use Tosco v. Hodel, a vacated decision, as authority for the issuance of oil shale land patents would likely constitute a constructive fraud on the United States.

12. In light of the scandalous circumstances attendant, surrounding and underlying the promulgation of Freeman v. Summers as noted in the above-mentioned Regional Solicitor's Office briefs, I respectfully submit that it would be grave error for the Department of the Interior to continue to recognize Freeman v. Summers as a valid precedent notwithstanding anything to the contrary in Andrus, referred to above. It is necessary to ask: Would it be constructive fraud on the United States, for the BLM and the Interior Department, to permit further unpatented oil shale mining

claims to go to patent, if all else is regular, on the standard of Freeman v. Summers as set out by Mr. Cason in his Statement, page 4, dated February 28, 1989, before Chairman Rahall's House Subcommittee hearing on H.R. 643 and S.30? Also see S. Hrg. 100-527 (1987), at pages 243-260, on Oil Shale Mining Claims held on October 16, 1987 before Senate Subcommittee on Mineral Resources, Development and Production.

On pages 250 through 253 of said above S. Hrg. 100-527, there appears pertinent quotes from the Senate Committee Hearings held in 1931 with reference to the Ralph Kelly charges and how Freeman v. Summers was reached. On the basis of the information contained on said pages 250 through 253, of the Regional Solicitor's Office analysis, it appears to me to be a fact that then Chairman Gerald P. Nye of then Senate Public Lands Committee, by letter of April 1931 as quoted, in part, on page 253, never advised the Interior "Department to proceed with patenting under" the Freeman v. Summers standard as represented by Mr. Cason in his Statement of February 28, 1989, page 5, before Chairman Rahall's House Subcommittee Hearing. You and your lawyer experts must read pages 250 through 253 to see what Senator Nye stated, in part, in his April 1931 letter to the Secretary of the Interior, as quoted, on page 253 and to appreciate the fact that Mr. Cason apparently has never read the memorandum and the analysis set out on pages 243-260 of S. Hrg. 100-527. (Also see Andrus v. Shell Oil Co., 446 U.S. 657, at page 669 (1980) for a quote from Senator Nye's letter.)

13. It is necessary for me to comment that the instructions of Mr. Cason for the "discovery" and "annual assessment work" criteria sent to Senators Melcher and Johnston in early December, 1988, seem to have been based partly, if not solely, on the criteria apparently adopted in the decision of Tosco v. Hodel by Chief U.S. District Court Judge Finesilver, Colorado. It is now my position that the criteria in Mr. Cason's December 1988 letters to Senators Milcher and Johnston relating to the "discovery" and "annual assessment work" requirements of the U.S. Mining Law, as amended, are totally inadequate and in error in light of U.S. Supreme Court decisions in Andrus v. Shell Oil Company, et al., (1980) and Hickel v. Tosco (1970) respectively.

Although Andrus is clouded with obvious conflicts noted hereinabove, and if Andrus had the legal effect of nullifying Interior's Instructions of 1920, contained in 47 L.D. 548, it is my position that the prudent man test as enunciated in Castle v. Womble is the proper standard for "discovery" applicable to an oil shale claim subject to the refinements as to timeliness of discovery as noted in the above-quoted footnotes in Andrus and as further defined in Strauss. It is clear that the U.S. Supreme Court in the majority opinion in Andrus has clearly made a significant error by permitting a "discovery" to be perfected on the basis of a prospectively valuable oil shale deposit within a claim.

I submit that whatever "discovery" based on oil shale deposits which were physically and/or naturally exposed, if any, within the limits of each of the 524 claims prior to February 25, 1920 or as a result of diligent prosecution of work on that date and thereafter diligently prosecuted to

"discovery," in fact, was lost by failure to develop and as a result of the long run changes in economic circumstances, particularly, the changes that occurred in the period of the great depression, which made the oil shale deposits within the limits of each of the claims worthless as "prospective valuable deposits."

Certainly, the hypothetical , ident man of the mining law would not have been justified in the expenditure of his time, effort and n. ney, with a reasonable prospect of success, to make a paying mine on each of the 524 mining claims in the period of 1920, if not prior thereto, to 19[illegible], permitted to go to patent under the August 4, 1986 Settlement Agreement. Accordingly, it is my position, notwithstanding Tosco v. Hodel or anything to the contrary in Andrus, a discovery of a "valuable mineral deposit" within the criteria of either Andrus or Castle v. Womble never existed on each of the claims, the matter of the August 4, 1986 Settlement Agreement to satisfy the "discovery" requirement of the U.S. Mining Laws, as amended, on the date(s) of issuance of patent(s).

14. Andrus was clearly known to various lawyers then in the Field and in Washington, D.C. in the Solicitor's Office, U.S. Department of the Interior to be an erroneous decision. The Solicitor's Office in Washington, D.C. failed to take steps to carry out a recommendation from the Regional Solicitor's Office, Denver, that a petition for rehearing be filed in Andrus. This failure should be carefully investigated by Interior and by Congress. See S. Hrg. 100-744, at page 274 (1988).

15. It is doubtful whether the Interior and Justice Departments, at the policy making levels, can correctly apply Andrus as a precedent to remaining unpatented oil shale claims: 1) The decision is erroneous and the rationale for the decision is not clear in view of the content of the dissenting opinion. 2) The decision is full of conflicts as noted in the paragraph quoted from the decision and as discussed above. 3) The Department of the Interior has in its possession in the Solicitor's Office, Washington, D.C., two memoranda dated 1980 which outlined the errors in Andrus. 4) The decision appears to endorse Freeman v. Summers, a known erroneous decision, based on erroneous law and erroneous facts. 5) The contests underlying Andrus, did not use all available charges -- thus the true history of pre-1920, unpatented mining claims was not presented to the Court in Andrus. 6) The Court failed to properly apply the law as known to exist at the time pre-1920 claims were allegedly located.

I believe that the Interior Board of Land Appeals has "misapplied" the so-called discovery standard above-quoted from Andrus in some of its decisions relating to some of the claims, the matter of the August 4, 1986 Agreement.

The Department should have competent mining engineers with the assistance of knowledgeable and experienced mining law attorneys to examine the deposits found on certain pre-1920 oil shale mining claims, which the Board found as satisfying the discovery requirement, to determine whether the Board, in fact, misapplied the discovery standard, to in effect, find token deposits, if any,

allegedly exposed on claims pre-1920 as meeting the discovery requirement.

The Board decisions may have applied erroneously the Andrus standard for discovery for oil shale claims as to make a mockery out of the discovery standard stated in Castle v. Womble, 19 L.D. 455 (1894) and as approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905).

16. The Board members might be subject to political manipulation from the Interior Secretariat.

17. Even if it is assumed, subsequent to Andrus, that it would be proper to apply Freeman v. Summers as the controlling criteria for the rule of discovery for a pre-1920 unpatented oil shale claim, I believe it most probable, more so than not, that the majority of the 524 mining claims, the matter of the August 4, 1986 Agreement, could not satisfy the Freeman v. Summers discovery requirement as to the majority of the 524 claims as of February 25, 1920. As I understand the situation, the majority of the claims did not have visible natural exposures of oil shale within the limits of each of the claims to even satisfy the Freeman v. Summers requirement for discovery. Whatever exposures of oil shale existed naturally within the limits of each of the 524 oil shale claims were in most cases totally disconnected from the better deposits situated at a considerable depth below the surface on most of the 524 claims. The Secretary should have the points made in this paragraph checked out very carefully on the ground by competent experts in the Department.

In this connection, it is here noted that in Contests 359 and 360, the Hearings Examiner found some of the claims in said contests invalid for failure to demonstrate a timely surface exposure sufficient to meet the discovery requirement of Freeman v. Summers. As to such invalid claims neither side appealed the Examiner's decision to the Director, BLM. In reference to the contentions made in this paragraph, and the preceding one, you are at liberty to have a competent and experienced mineral examiner, with assistance of a competent mining lawyer, verify on the ground the accuracy of my contentions, in the context of this entire letter.

18. In a Report dated February 26, 1987, prepared by the Surveys and Investigations staff of the House Committee on Appropriations regarding the events surrounding the Tosco v. Hodel, 611 F. Supp. 1130 (1985), decision on oil shale mining claims and its potential impact on revenues to the U.S. Treasury, there is a wealth of information relative to oil shale claims and events leading to the August 4, 1986 Settlement Agreement.

The report on page i reveals that approximately 40,000 pre-1920 oil shale claims covering approximately 6.4 million acres (of public lands in the States of Colorado, Utah and Wyoming), had been allegedly located prior to the enactment of the February 25, 1920 Mineral Leasing Act. The report among other things, refers to fraudulent activities by some alleged locators. See pages 7 and 8 of the report.

While the report, in itself, is a most illuminating document, particularly in regard to billions, if not more, of potential dollars lost by the United States as a result of the 82,000 acres given away pursuant to the terms of the August 4, 1986 Settlement Agreement, the report is surprisingly deficient in that the mismanagement and improper disposals of oil shale lands under defective Interior procedures as identified or as noted in the 5 volume legal briefs prepared in 1968 by then attorneys in the Office of the Regional Solicitor, U.S. D.I., Denver, and filed in BLM contests 359 and 360, above noted, was not reflected or referred to in the February 26, 1987 report.

The report fails to reflect adequately the fact that it would be totally inconceivable for any Secretary of the Interior or for any Congressional Committee to believe that each of the 40,000 pre-1920 oil shale claims covering some 6.4 million acres of Federal oil shale lands in the States of Colorado, Utah and Wyoming were perfected in compliance with law and thereafter maintained in compliance with law from the dates of the alleged location of the claims to the date of the report. In fact, it was probably well known in the former GLO in the Interior Department and later in the BLM and in the Solicitor's Office in Washington, D.C. in the Department of the Interior that the bulk of the claims were abandoned years ago and/or were lacking in validity.

Among other things, the report did not reveal the factual background of how Freeman v. Summers decision was "rendered" in the U.S. Interior Department which led to Senate Public Lands Committee Hearings in 1931 under S. Resolution 379, 71st Congress. The scandalous situation then existing in the Interior Department which led to the promulgation of Freeman v. Summers is adequately described in numerous pages of the Interior legal briefs, noted above, in Contests 359 and 360 and in the U.S. v. Weber Oil Company, et al. However, the report never pointed out that the House and Senate Committees holding hearings on oil shale claims, have never identified or outlined the controlling law then in existence relative to unpatented oil shale mining claims.

The Senate Public Lands Committee hearings held in 1931 pursuant to S. Resolution 379, 71st Congress, failed to identify what the errors were in the Freeman v. Summers decision. This failure has been continued in oil shale claim hearings held by the House and Senate Subcommittees or Committees since 1931 to the present.

The report failed to point out that it would have been indeed error for any Secretary of the Interior to find that each of the 40,000 pre-1920 oil shale claims in fact embraced lands which could be properly characterized as "mineral in character" so as to come within the purview of the U.S. mining law and properly disposable under the U.S. mining law, as amended, if all else was regular, because in disposing 6.4 million acres, would create a situation that all of this oil shale could not be prudently mined. In short, the U.S. Mining Law would be foreseeably abused in permitting such a huge disposal and would not lead to putting the shale oil into the market place, and thus the purpose of the mining law would be defeated.

Accordingly, it is noted here, the February 26, 1987 report is deficient in outlining the deficiencies in the Interior and Justice Department operations, as well as deficiencies in Congress, from 1920, if not before, to its date of February 26, 1987, in regard to the administration, management and disposal of Federal oil shale lands.

19. The handling of a trillion dollar resource by staff largely untrained in mining law and in economics in the Interior Department without proper leadership in the Department by top officers, has led to mismanagement, which has been so far neglected and/or condoned by Congressional oversight Committees, as was done for many years prior to and since the August 4, 1986 Settlement Agreement.

Justice Department lawyers at the Washington, D.C. level seldom, if ever, consult with Interior lawyers handling public land matters in the Field. The system for adjudicating claims to patent apparently is totally devoid of proper involvement and legal review of oil shale claims on the part of lawyers in Interior, whether in Washington or in the Field.

The deficiencies in Interior and Justice Department operations in regard to mineral resources, including Federal oil shale lands, are so large that major land grabs have been effected by private interests, as Federal oil shale lands under the guise of pre-1920 oil shale mining claims to the extent that some 430,000 acres in Colorado alone has been divested from Federal ownership under dubious, if not fraudulent pretenses, in the period of 1920 to the present.

And hardly a whimper has been made by any Secretary of the Interior or any Attorney General of the United States, though certainly some of these above deficiencies must be commonly known to exist in Washington, D.C., certainly by some past and present Government officers and members of Congress.

20. It is appropriate to state that certainly some of the personnel in the BLM in Denver and in the Regional Solicitor's Office, U.S. D.I., Denver, Colorado, must be certainly aware of G.L.O. investigation reports, and other documents, briefs, studies and/or other materials that would help one draw a valid conclusion that in fact the vast majority of pre-1920 mining claims were located for mere speculative purposes and not for good faith mining purposes. Thus, the question arises whether claims located for speculative purposes are in fact to be treated as fraudulent claims.

In this above regard, I believe such claims would be deemed under the mining law to be fraudulent even though not located with the use of dummy locators.

21. Accordingly, I recommend that the Secretary's investigation should include a process to debrief the lawyers in the Regional Solicitor's Office, Denver, who have in the past or who may have more recently handled oil shale matters, to ascertain the entire oil shale situation as known to such lawyers from 1920 to the present, including ascertaining just what went wrong in the Interior Department, including in the Justice Department, which led to and culminated in the August 4, 1986 Settlement Agreement and the resulting disposals of 82,000 acres of Federal oil shale lands pursuant

and subject to the terms of the Agreement at $2.50 an acre and to determine what should be done in the BLM and in the Department to prevent a further repetition of what I believe to be the most improper application of presently existing law to pre-1920 unpatented oil shale mining claims. Remedies available to the United States on past erroneous disposals, if any, must be explored and identified and proper curative action taken by the U.S. Government.

22. It is incomprehensible for me to understand why Interior and the Justice Departments have never established a task force to investigate whether patent applications filed with the BLM on claims, years ago declared null and void on the charge of failure to do assessment work, constitute some form of a fraud upon the United States or a conspiracy to defraud the United States of valuable public domain lands, especially where the patent applications fail to reveal or reflect the fact that the claims applied for had been declared null and void in the late 1920's or in the early 1930's.

It is noted here, that I believe many of the applications for patent filed on the 524 claims, the matter of the August 4, 1986 Settlement Agreement, likely never referred to the decisions which had declared claims null and void, the matter of patent applications.

23. I submit that it is time for the Interior and Justice Departments to undertake action to effectively reveal to the American people the defects and flaws in pre-1920 unpatented oil shale claims, though such claims were noticed with the BLM in the alleged compliance with the provisions contained in the Public Land Policy and Management Act.

The Interior and Justice Departments can no longer act to perpetuate the myth by silence and/or by mismanagement that somehow the pre-1920 claims, assuming compliance with the FLPMA, are valid considering the information contained in the files in said Departments, or in their archives, which information can be used to explode the long-standing unfounded myth of purported validity of such claims, excluding possibly a few which possibly might conceivably be properly determined to be valid.

24. With reference to fraud in the location of some pre-1920 mining claims, see pages 104-105, S. Hrg. 100-527 (1987). Administrative Law Judge Rampton's decision in U.S. v. Weber, July 16, 1982, contains some interesting information regarding location of claims in fraud on the U.S. It is necessary for the Secretary to examine whether the Interior Board of Land Appeals should have overruled Judge Rampton's decision, to, in effect, make a finding that some of the claims in Contest 260 were located in fraud on the U.S. through the use of dummy locators. See U.S. v. Weber Oil Co., 68 IBLA 37, 89 I.D. 538 (1982).

I call your attention to U.S. v. Rea L. Eaton, A-14971 (June 8, 1931) involving claims which were declared null and void for fraud in the location. Yet, these claims went to patent in 1951. Suit was brought in 1957 in the case of U.S. v. Eaton Shale Company, et al., Civil No. 5758, U.S.D.C. (Colo.) (Washington, D.C. Solicitor's Office reference, 901-18-272) to cancel the patent or otherwise

recover the value of the lands on the date of issuance of the patent. The suit was compromised, largely favorable to the defendants in 1960 by the Justice Department, with payment of a fairly large amount of money, to the United States. You can explore the record in that case to get a better understanding of oil shale claim matters.

In 1956, U.S. v. Langdon H. Larwill and Horace G. Slusser, as Trustees for the Stockholders of Wheeler Oil Shale Company, BLM Contest 126 (Colo.) was instituted on March 5, 1956 involving claims in Colorado 04383, 04384, 07395, Wheeler Shale Company. It was found later that the BLM, Washington, D.C. records contained a notation to a decision which had declared the claims applied for null and void on the charge of fraud in the location in 1932. Thereafter the application for patent was rejected by the BLM in Colorado and the contest dismissed.

U.S. v. Rea L. Eaton, A-14971, June 8, 1931, petition for exercise of supervisory authority denied, March 22, 1932, declared the French 1-11 inclusive, and 26-31, inclusive, oil shale placers void on the grounds that Sibbald secured the location of the claims under a scheme under which he was to secure an interest in excess of that permitted him by the law. Since a great many of other claims were located pursuant to the Thurmond-Sibbald Agreement, dated March 30, 1918, any of the Bitumen, G.W.S., Victory, French, or Sibbald-Coral groups of oil shale claims not previously declared null and void might likely be subject to the charge and proof of dummy locations in light of the analysis of the facts made by the Secretary in departmental Decision A-14971. Also see letter dated November 10, 1958 from the Associate Solicitor, Division of Public Lands to the Director of Bureau of Land Management, on the subject: "Mineral patent applications, Colorado 04383, 04384, and 07395 -- Wheeler Shale Company," and the Associate Solicitor's memorandum, dated November 10, 1958 to the Regional Solicitor, Denver, Colorado, on the same subject.

The above paragraph raises the question of whether some of the 524 claims, the matter of the August 4, 1986 Settlement Agreement, could have been declared null and void on the charge of fraud in the location in light of the information in the above-said paragraph. The above paragraph also raises implicitly the question whether some of the claims in the present pending patent applications, filed with the BLM (Colorado), should be contested on the charge of fraud in the location. I trust that the Secretary will cause the BLM in Colorado as well as staff in the BLM in D.C. and in the Solicitor's Office, whether in Washington, D.C. or in the Field to carefully ascertain whether the leads that I have set forth above can be used as a basis to initiate contest proceedings or to result in corrective action being taken in the Interior and Justice Departments.

Also, I suspect that some BLM staff do not know how to use investigative leads from decisions and old investigation reports of special agents, formerly in the Department of the Interior and in the GLO, with other materials such as in abstracts of title, for getting pre-1920 claims declared null and void on the charge of fraud in the location. Such materials are apparently considered out of sight and

therefore out of mind, since such materials, if not earlier destroyed, are kept in the BLM archives in Washington, D.C. and also likely in the BLM archives in the Field.

Thus in light of the above, it is apparent that the BLM officials as well as newly selected attorneys for high positions in the Solicitor's Office, Washington, D.C. should be shocked into reality to understand it is probable, more likely than not, that many, if not most, of the pre-1920 claims were likely located for the benefit of a prime mover(s) with the other alleged co-locators being mere dummies.

25. I submit that the Interior and Justice Departments appear to have, in the past, handled oil shale land matters as some inconsequential and minor matter at the political levels, as though oil shale land matters are unworthy of being handled on their own facts and merits and in accordance with applicable law. Secretaries of Interior have failed to issue statements in opposition to misuse of the U.S. Mining Laws, for the purpose of getting Federal oil shale lands privatized. I strongly suggest that the Secretary of the Interior take charge of the oil shale lands mess in our Federal Government.

It does not appear that the Justice Department at the Solicitor Generals' level bothered to really get down to fully understanding what was involved in Contests 359 and 360 and understanding what was contained in the 5 volume brief dated May 20, 1968 filed in said contests for the Contestant prior to a Deputy Solicitor General appearing before the U.S. Supreme Court for the United States in the case now known as Andrus, a resulting disaster to the United States.

It should be noted that an effort was made in Contests 359 and 360 to expose the Freeman v. Summers decision, a decision which should have been known to the Justice Department in early 30's as an erroneous and "fixed" decision. Instead, the Justice Department, through one or more of its Attorney Generals, acted to help then President Hoover to sweep under the rug the controversy resulting from Mr. Ralph Kelly's efforts to expose the improprieties in the administrative process leading to Freeman v. Summers and the errors in Freeman v. Summers.

The Interior and Justice Departments have apparently taken the easy and compliant path towards dealing with claimants as though claimants do not have the burden of proof to prove that their claims are valid or that the claims applied for, in fact, satisfy all the applicable requirements of law and have not been abandoned or located in fraud, etc. The interests of the people of the United States under the provisions in the Mineral Leasing Act of February 25, 1920, as amended, in Federal oil shale lands, have not protected adequately or properly by either the Interior Department or the Justice Department.

Even some members of the U.S. Congress act as though pre-1920 unpatented mining claims are, in fact, valid notwithstanding their commonly known invalidity. See S. 30 and H.R. 2392 (101st Congress, 1st session).

Self-serving declarations of validity of claims, made by successors to the original claimants, appear to be improperly accepted as being factually valid by officials and employees in Interior, and Justice and in the Congress.

Applicable principles of law relevant to pre-1920 oil shale mining claims are totally disregarded.

Paper locations, long known to be invalid for purposes of getting a patent, are apparently honored in the Interior and Justice Departments.

Provisions in the Federal Administrative Procedure Act of 1946, as amended, (60 Stat. 241 (1946), 5 U.S.C.A. section 556(d), see note 106) applicable to burden of proof in a contest or patent proceeding appears to be erroneously circumvented in the Interior Department by the Interior Board of Land Appeals as to put the real burden of proof on the United States relating to charges of fraud in the location, claim not located in good faith, and abandonment of a claim, in an oil shale mining claim contest proceeding. See U.S. v. Weber Oil Co., 68 IBLA 37, 89 I.D. 538 (1982). Questionable reasoning is set forth in Board decisions to justify the circumvention of the applicable provisions in the APA in regard to the burden of proof even though it had been recognized in Foster v. Seaton, 271 F.2d 836, 837, 838 (1959) by the Court of Appeals for the District of Columbia that in any mining contest initiated by the Government, the contestee has the burden of proving the validity of his claim. How can the plain language in the APA be circumvented when the language in the act does not contain any exceptions to permit the Board to reach its desired results?

Accordingly, in light of Foster v. Seaton, in my opinion, the failure of the original claimants of a pre-1920 claim, or his successors in interest to have obtained the patent on the claim in the early 1920's, makes it almost totally impossible for a modern day patent applicant to establish the validity of a claim in a contest proceeding if the pre-1920 claim is contested on all available charges which the United States may use upon which to contest almost all pre-1920 unpatented claims, even assuming the applicant had properly complied with the provisions contained in section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744).

Thus Mr. Cason's discussion under word location on page 3 of his Statement of February 28, 1989 before Chairman Rahall's House Mining and Natural Resources Committee that "...the veracity of the original locators is difficult to challenge and must be accepted at face value unless compelling evidence dictates otherwise" in regard to pre-1920 unpatented oil shale claims appears flawed and likely based on his apparent misunderstanding and erroneous belief that the United States has the burden to establish the invalidity of a claim. Also see U.S. v. Zweifel, 508 F.2d 1150, at 1157 (10th Cir. 1975), Cert. denied, 423 U.S. 829 (1976).

Also I do not understand how Mr. Cason can expect most pre-1920 original locators to appear to testify in regard to how pre-1920 oil shale claims were allegedly located, perfected, and maintained,

if pre-1920 mining claims were properly contested on all applicable and available charges, including abandonment, fraud in the location, and elimination of the claims by the United States by adverse possession (see the adverse possession charge originally stated in Contest 260, BLM (Colorado) in complaint issued in 1961 by the BLM, but which charge apparently was left out of the amended complaint issued in 1981 in Contest 260 by the BLM (Colorado)).

What do present day applicants for patents really know to prove the validity of each of the pre-1920 oil shale unpatented mining claims presently applied for? Did any of the present applicants observe how pre-1920 alleged claims were located and perfected on the ground from the date or dates of location and continuously from then to the present, so as to be able to give competent, reliable and probative testimony to prove the validity of pre-1920 claims by the preponderance of the evidence? Also see, Donnelly v. U.S., 228 U.S. 243, at 266 (1912) which discusses the requirement of taking possession of the ground within the limits of a claim and which sets out other principal requirements for perfection of a claim and in regard to the fact that a mining claim may be abandoned by failure to do the required annual development work.

Mere paper locations which appear in the records of a county recorder, based on a recordation of a location certificate without the claim being properly perfected on the ground to satisfy the applicable law, in themselves, do not constitute anything more than ex parte self-serving declarations. See Starks v. Mackey, 60 I.D. 309, 311 (1949), citing Cole v. Ralph, 252 U.S. 286, 303 (1920). Discovery must be proved by evidence other than by a self-serving declaration on the part of the locator appearing in a recorded notice of discovery.

The omission on the part of alleged claimants to perform annual assessment work was due largely to the abandonment of the claims in the 20's and early 30's and giving up of possession, if any, to the lands within the limits of the claims. Failure to do the required annual assessment work would terminate the interest, if any, of the claimant in the claim. See Black v. Elkhorn Mining Company, 163 U.S. 445 at 450 (1896) and Hickel v. Tosco, 400 U.S. 48 (1970). The Department of the Interior should have in its possession information to show that on most of the claims, the matter of the August 4, 1986 Settlement Agreement, affidavits of annual labor performed were not recorded for many years from 1920, until the late 40's, if not to the early 70's. The same situation should also exist as to the claims presently, the matter of applications for patent.

The failure of claimants to answer an old GLO contest complaint involving pre-1920 unpatented mining claims would appear to be excellent evidence to support a charge of abandonment of the claims, when coupled with other evidence of abandonment.

I wonder whether the BLM has taken accurate steps to determine whether patent applicants, or their predecessors, took proper steps to actually legally comply with the recording requirements of the Federal Land Policy and Management Act of 1976, involving pre-1920 unpatented mining claims.

26. Mr. Cason in the second paragraph on page 5 of his Statement of February 28, 1989, before Chairman Rahall's House Subcommittee on Mining and Natural Resources alluded to the so-called change in Departmental policy in 1961 in regard to oil shale claims. If a change occurred in Departmental policy on oil shale claims, the change had its roots in the period of about 1958 through 1960. BLM Contest No. 147 (Colorado) was instituted in late 1958 or early 1959, prehearing conference was held in 1959, hearing held in 1960, brief probably filed in late 1960 or in early 1961. The contestee apparently relinquished the claims to the United States and the contest was dismissed by the BLM in about 1963. BLM Contest 260 (Colo.) was instituted in 1961, but files on claims in said contest had been sent by BLM (Colo.) to Washington, D.C. in 1960, Contest was heard in 1982 after complaint was amended in 1981. BLM Contest 193 (Colorado) was instituted in 1959, and heard in 1982. Contests No. 359 and No. 360 were apparently instituted in 1964, and some of the claims in these contests ultimately became the matter of Andrus v. Shell Oil Co., 446 U.S. 657 (1980).

Efforts were made in the Regional Solicitor's Office, Denver, in 1959 to raise the effect of the old GLO and Departmental decisions, rendered in the late 20's and early 30's, which had declared claims null and void for failure to do the required annual assessment work. These decisions affected approximately 3 million acres of Federal oil shale lands. After further efforts were made in 1961, the Solicitor's Office in Washington, D.C. in 1962 ultimately approved the position of the Regional Solicitor's Office, Denver, that such decisions could be invoked by the BLM as a reason to reject patent applications on claims thentofore declared null and void for the failure to do the required annual assessment work. Rejections of patent applications occurred in February 1962. This ultimately led to the U.S. Supreme Court decision in Hickel v. Tosco, 400 U.S. 48 (1970).

27. I submit that an effort has been made by the BLM, and by the Secretariat handling oil shale claim matters and by possibly some in the Solicitor's Office, Washington, D.C. during the past several years to circumvent the invoking of old decisions of the GLO and the Interior Department which declared oil shale claims null and void on the charge of failure to do required annual assessment work. The BLM could have rejected patent applications on the claims, the matter of such old decisions, in the last several years but has not done so. Efforts made in the Department to circumvent the old decisions and to disregard the thrust and sweep of Hickel v. Tosco, if continued further, will culminate in another oil shale lands scandal which can constitute a severe cloud on Secretary Lujan's stewardship of the Department and of his stewardship of public domain land and mineral resources.

28. Oil shale matters should not be handled on a political basis -- instead such public domain matters should be handled on a bi-partisan basis, in the spirit of Senators Bob LaFollette, George Norris, Wayne Morse, and President Teddy Roosevelt -- strictly upon the basis of principle, merit and the law -- otherwise the three branches of our Federal Government will be forever detrimentally clouded and the people of this entire Nation will be detrimentally affected.

29. I recommend that Secretary Lujan's investigators, preferably with the involvement of the Interior's Inspector General and the GAO, carefully study the entire oil shale lands scandal(s) from 1920, if not before, to the present. I believe that Secretary Lujan has an opportunity to clean up the oil shale scandal(s) which heretofore have occurred and to prevent the further giveaways of Federal oil shale lands under the pretense of unpatented oil shale pre-1920 mining claims. All matters surrounding and underlying the August 4, 1986 Settlement Agreement and resultant disposals of 82,000 acres of Federal oil shale lands must be carefully investigated with the results of such an investigation being given to President Bush, to OMB, and to Congress.

30. I recommend that the Secretary Lujan request the Regional Solicitor's Office, Denver, to prepare a thorough explanation and orderly summary of all legal requirements that a patent applicant must meet to obtain an oil shale mineral patent on a claim, including an analysis of what constitutes a valid pre-1920 unpatented oil shale mining claim, as well as what constitutes an invalid oil shale claim, including a thorough discussion, and a summary of all grounds available to the BLM to contest pre-1920 unpatented oil shale claims, of the law and facts to support each of the charges which could be stated in a BLM complaint to contest pre-1920 unpatented oil shale mining claim or claims.

31. The Secretary should also request a meeting with all the attorneys who have handled oil shale matters in the Denver Regional Solicitor's Office, to brief him personally in the near future at some specified date in the Regional Solicitor's office on all matters covered in this letter, including the views of these lawyers as to what should be done in the Interior Department on oil shale claim matters, including past probable erroneous disposals.

32. I shall await your response to this letter and stand ready to cooperate in any investigation the Secretary of the Interior may order.

February 21, 1990

Honorable Howard M. Metzenbaum
United States Senator
Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

This letter is written for the purpose of motivating you to get on top of the Federal Oil Shale Lands Scandals in our Federal Government which, in my judgement, have not received proper attention and action in the United States Senate. In fact, efforts in our U.S. Congress as reflected by S.30 and H.R. 2392, which are apparently pending before the Senate Subcommittee on Mineral Resources, Development and Production, constitute evidence, in my view, of scandalous handling of Federal oil shale lands and matters by some in our National Congress.

In these circumstances, I find it necessary for me to supply to you for your personal evaluation copies of the following documents:

Letter dated January 20, 1990 addressed to Chairman J. Bennett Johnston and to Chairman Jeff Bingaman, together with copies of the documents, identified on pages 3 and 5 of said letter, submitted to said Chairmen.

The copy of the draft letter, referred to on page 5 of the letter dated January 20, 1990, you will note is also attached to the copy of the January 20, 1990 letter which I have enclosed for your review. The draft letter contains sensitive information which draft letter and information should be treated as though confidential. The draft letter contains much information which the Senate Subcommittee on Mineral Resources, Development and Production failed to develop in its Subcommittee Hearings referred to in my January 20, 1990 letter to Senators Johnston and Bingaman.

You are informed that Senators Johnston and Bingaman have apparently seen fit not to respond to my letter dated January 20, 1990 to them. Likewise you are also informed that Honorable Patrick J. Leahy, Chairman, Senate Agriculture Committee, has apparently opted, according to information given to me by a Senate Committee staffer over the telephone, to consider referring my letter of January 19, 1990, to Chairman Leahy, including the enclosures thereto, to the Senate Energy and Natural Resources Committee or one of its Subcommittees, for handling. But Chairman Leahy has not sent to me, as yet, a response to my letter to him dated January 19, 1990.

In view of the above, I request that you intervene with Senators Johnston, Bingaman and Leahy to ascertain what is holding up their response or responses to me to my above mentioned letters. Please inform me what you are able to find out on this.

You are informed that either in late 1986 or in 1987 I called your office. I wanted to talk to your administrative assistant or to you on the scandalous matters in our Federal Government involving Federal oil shale lands and pre-1920 oil shale mining claims. As I could not get through, I left a message to have either the administrative assistant or you to call me back. Needless to say I never got a return phone call to the best of my knowledge.

On or about March 2, 1987, I transmitted to you copies of the documents reflected at page 269 and 290, of S. Hrg. 100-744. For some reason I never received a letter from you acknowledging receipt of the documents by you.

About 2 weeks ago I called your office and was referred to Ms. Karen Kirchgasser. I was told that she was your energy staffer. I then talked to her to attempt to brief her on more recent oil shale matters needing attention in our Federal Government and encouraged her to obtain the Senate Hearings identified in the above mentioned January 20, 1990 letter. I talked to her again today and she suggested that I write to you to express my concerns.

You are informed that this letter, including the enclosures herewith, and the materials and Statements submitted by my brother Dr. Michael S. March, or me or by both of us, as reflected in the printed Senate Hearings (S. Hrg. 100-527, S. Hrg. 100-744, and S. Hrg. 101-248) largely reflect my present concerns in regard to the scandalous handling of Federal oil shale resource matters in our Federal Government.

The copy of my Statement (21 pages plus enclosures thereto) dated October 20, 1989 addressed to Chairman Nick Joe Rahall, of the Mining and Natural Resources Subcommittee of the House of Representatives, should be carefully studied by you for the Statement ought to alert you to a real bad situation in the U.S. Department of the Interior and in the U.S. Department of Agriculture. The failure of these said Departments to properly administer the U.S. Mining Law, as amended, to mining claims, in itself, constitutes a major national scandal in our Federal Government requiring immediate investigation and attention without further passage of time and further coverups in our National Congress.

Since I am aware that you are one of the members of the U.S. Senate on the Senate Committee on Energy and Natural Resources, I felt compelled to write this letter to you to put you on notice of matters requiring your attention and action in the U.S. Senate.

The writer, Fred S. March, hereby reserves all ownership rights to this letter.

I will appreciate a written response from you to this letter and the matters prompting this letter. You or your staffers may reach me on 1-303-828-3976, if you or your staffers care to do so, prior to April 15, 1990, by calling me early in the morning, my time. I expect to return to the Pacific Northwest on or about April 15, 1990.

Faithfully,

Fred S. March

Fred S. March

P.S. I suggest that you assign the best qualified and experienced lawyer available to you to review this letter, including enclosures herewith and the above-mentioned Senate Hearings, particularly materials and Statements submitted for the record of said Hearings on oil shale claims, bills and matters, by my brother, Dr. Michael S. March and me.

I request that you send to me, as soon as possible, a copy of the so-called Johnston-Leahy packet, allegedly sent by said two Senators to other Senators in the U.S. Senate, which packet allegedly played a part in defeating Mr. Cason for the Assistant Secretary of Agriculture position.

Temporarily at:
P.O. Box 285
Erie, Colorado 80516

Permanent at:
P.O. Box 742
Ocean Shores, WA 98569